

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2010 MAY -6 AM 1:04

CLEAR OF THE COURT

BY:

RUSSELL BRIMER

1 Clifford A. Chanler, State Bar No. 135534
Daniel Bornstein, State Bar No. 181711
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

CASE MANAGEMENT CONFERENCE SET

OCT - 8 2010 - 9⁰⁰ AM

5 Attorneys for Plaintiff
6 RUSSELL BRIMER

DEPARTMENT 212

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

11
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 WHO'S THERE, INC.; OFFICEMAX
16 INCORPORATED; and DOES 1-150,
inclusive,

17 Defendants.

Case No. **CBC-10-499594**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff RUSSELL
3 BRIMER, in the public interest of the citizens of the State of California, to enforce the People's
4 right to be informed of the presence of lead, a toxic chemical found in vinyl-coated wire sold in
5 California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
7 warn California citizens about their exposure to lead, present in or on certain vinyl-coated wires
8 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State
9 of California.

10 3. High levels of lead are commonly found in and on color coated metal fasteners
11 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State
12 of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

18 5. On February 27, 1987, California identified and listed lead as a chemical known
19 to cause birth defects and other reproductive harm. Lead became subject to the warning
20 requirement one year later and was therefore subject to the "clear and reasonable warning"
21 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*
22 *Health & Safety Code § 25249.8.*) Lead shall be referred to hereinafter as the "LISTED
23 CHEMICAL."

24 6. Defendants manufacture, distribute, and/or sell color coated metal fasteners
25 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *Ding*
26 *Dong Oh-So-Useful Clips (#25703 60161 9)*. All such color coated metal fasteners containing
27 the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."
28

1 first having been provided with a "clear and reasonable warning" regarding such toxic
2 exposures.

3 29. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
5 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
6 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
7 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges
8 and believes that such violations will continue to occur into the future.

9 30. After receipt of the claims asserted in the sixty-day notices of violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a
11 cause of action against DEFENDANTS under Proposition 65.

12 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
14 limits.

15 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
17 LISTED CHEMICAL.

18 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
19 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
20 during the reasonably foreseeable use of the PRODUCTS.

21 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
22 continues to cause consumer and occupational exposures to the LISTED CHEMICAL, as such
23 exposure is defined by 27 CCR § 25602(b).

24 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
26 and/or ingestion.

27 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
28 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution and/or offer for sale or use of
2 PRODUCTS to individuals in the State of California.

3 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
4 consumers and/or other individuals in the State of California who were or who could become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable use of the PRODUCTS.

7 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
10 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to
11 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

12 39. As a consequence of the above-described acts, DEFENDANTS are liable for a
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
14 Safety Code § 25249.7(b).

15 40. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 41. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
19 hereinafter.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

22 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
23 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
24 alleged herein;

25 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
26 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
27 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
28

1 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures the
2 LISTED CHEMICAL;

3 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

4 4. That the Court grant such other and further relief as may be just and proper.

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7 Dated: May 6, 2010

Respectfully Submitted,

THE CHANLER GROUP

8
9 By: 

Clifford A. Chanler
Attorneys for Plaintiff
RUSSELL BRIMER