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**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 25 2010

CLERK OF THE SUPERIOR COURT
E. Robinson, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 COMPTREE INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. RG10522420

**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 or on color coated metal
5 fasteners, push pins, paper clips, and binder clips sold in 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 color coated metal
8 fasteners, push pins, paper clips, and binder clips that defendants manufacture, distribute, and/or
9 offer for sale to consumers throughout the State of California.

10 3. High levels of lead are commonly found in and on color coated metal fasteners,
11 push pins, paper clips, and binder clips that defendants manufacture, distribute, and/or offer for
12 sale to consumers throughout the State 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"), "[n]o person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable 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 Cal. Code Regs. §
22 27001(c); Cal. Health & Safety Code § 25249.8.) Lead shall be referred to hereinafter as the
23 "LISTED CHEMICAL."

24 6. Defendants manufacture, distribute, and/or sell color coated metal fasteners, push
25 pins, paper clips, and binder clips containing excessive levels of the LISTED CHEMICAL
26 including, but not limited to, those found in the *Merax Clip Pack, #210-249 (#8 34784 01394 5)*.
27 All such color coated metal fasteners, push pins, paper clips, and binder clips containing the
28 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65 - Against All Defendants)**

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the State of California have expressly stated in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.5, *et*
10 *seq.* ("Proposition 65") that they must be informed "about exposures to chemicals that cause
11 cancer, birth defects and other reproductive harm." (Health & Safety Code § 25249.6.)

12 26. Proposition 65 states "[n]o person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual...."
15 (*Id.*)

16 27. On September 30, 2009, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to COMPTREE, and various public enforcement agencies
18 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
19 the State of California were being exposed to lead resulting from the reasonably foreseeable uses
20 of the PRODUCTS, without the individual purchasers and users first having been provided with
21 a "clear and reasonable warning" regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
23 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
24 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in
25 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
26 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
27 believes that such violations will continue to occur into the future.

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

4 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
6 limits.

7 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
9 LISTED CHEMICAL.

10 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
11 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
12 during the reasonably foreseeable use of the PRODUCTS.

13 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
15 by 27 CCR § 25602(b).

16 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

19 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
21 accidental participation in the manufacture, distribution and/or offer for sale or use of
22 PRODUCTS to individuals in the State of California.

23 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and/or other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

27 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
2 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 39. As a consequence of the above-described acts, California Health & Safety Code
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

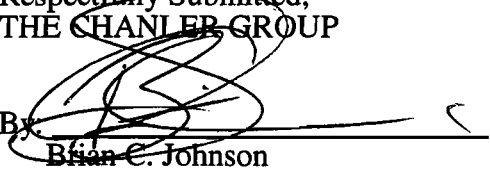
10 **PRAYER FOR RELIEF**

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

- 12 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
13 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
14 alleged herein;
- 15 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
17 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
18 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures the
19 LISTED CHEMICAL;
- 20 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
21 4. That the Court grant such other and further relief as may be just and proper.

22
23 Dated: June 25, 2010

Respectfully Submitted,
THE CHANLER GROUP

24
25 By 
26 Brian C. Johnson
27 Attorneys for Plaintiff
28 RUSSELL BRIMER