

FILED

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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Frumero, Deputy

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7 **RUSSELL BRIMER**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF MARIN**
10 **UNLIMITED CIVIL JURISDICTION**

12 **RUSSELL BRIMER,**
13 **Plaintiff,**

14 v.

15 **CVS PHARMACY, INC.; CVS CAREMARK**
16 **CORPORATION; and DOES 1-150, inclusive,**
17 **Defendants.**

Case No. *CIV 1004055*

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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1 **NATURE OF THE ACTION**

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

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

10 3. High levels of lead are commonly found in and on color coated metal fasteners that
11 CVS Pharmacy, Inc. ("CVS") and CVS Caremark Corporation ("CAREMARK") manufacture,
12 distribute and/or offer for 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"), "No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

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

23 6. Lead shall be collectively referred to hereinafter as the "LISTED CHEMICAL."

24 7. Studies show that pregnant women subject to high levels of lead exposure face
25 increased risks of spontaneous abortion and still birth. But even at low levels, lead exposure can
26 adversely affect a pregnancy, causing premature birth, shortened gestation, decreased fetal growth
27 and retarded fetal mental development. In a January 1997 report to Congress, United States
28 Department of Health and Human Services ("HHS") noted that the developing nervous system of a

1 fetus is particularly vulnerable to lead toxicity. Studies by HHS and the United States Agency for
2 Toxic Substances and Disease Registry report that the lead in the maternal blood can readily cross
3 the placenta barrier and enter the developing brain and nervous system of the fetus.

4 8. CVS and CAREMARK manufacture, distribute, and/or sell color coated metal
5 fasteners containing excessive levels of lead including, but not limited to, those found in *126 PC*
6 *Pins & Clips Combo Set #690318 (#0 50428 14743 6)*. All such color coated metal fasteners
7 containing lead shall hereinafter be referred to as the "PRODUCTS."

8 9. The allegations in this complaint are particularly significant where defendants'
9 PRODUCTS target teenagers and women in their reproductive years.

10 10. Defendants' failures to warn consumers and/or other individuals in the State of
11 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale of
12 the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
13 conduct as well as civil penalties for each such violation.

14 11. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
15 and permanent injunctive relief to compel defendants to provide purchasers or users of the
16 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
17 (*Cal. Health & Safety Code § 25249.7(a)*.)

18 12. Plaintiff also seeks civil penalties against defendants for their violations of
19 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

20 **PARTIES**

21 13. Plaintiff RUSSELL BRIMER, is a citizen of the State of California who is dedicated
22 to protecting the health of California citizens through the elimination or reduction of toxic exposures
23 from consumer products, and brings this action in the public interest pursuant to California Health &
24 Safety Code § 25249.7.

25 14. Defendant CVS is a person doing business within the meaning of California Health &
26 Safety Code § 25249.11.

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1 15. Defendant CVS manufactures, distributes, and/or offers the PRODUCTS for sale or
2 use in the State of California or implies by its conduct that it manufactures, distributes, and/or offers
3 the PRODUCTS for sale or use in the State of California.

4 16. Defendant CAREMARK is a person doing business within the meaning of California
5 Health & Safety Code § 25249.11.

6 17. Defendant CAREMARK manufactures, distributes, and/or offers the PRODUCTS for
7 sale or use in the State of California or implies by its conduct that it manufactures, distributes, and/or
8 offers the PRODUCTS for sale or use in the State of California.

9 18. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
10 doing business within the meaning of California Health & Safety Code § 25249.11.

11 19. MANUFACTURER DEFENDANTS engage in the process of research, testing,
12 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage
13 in the process of research, testing, designing, assembling, fabricating and/or manufacturing, the
14 PRODUCTS for sale or use in the State of California.

15 20. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
16 doing business within the meaning of California Health & Safety Code § 25249.11.

17 21. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
18 transport the PRODUCTS to individuals, businesses or retailers for sale or use in the State of
19 California.

20 22. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing
21 business within the meaning of California Health & Safety Code § 25249.11.

22 23. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of
23 California.

24 24. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
25 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of
26 Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
27 fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
28 ascertained, their true names shall be reflected in an amended complaint.

1 31. Proposition 65 states, “No person in the course of doing business shall knowingly and
2 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
3 toxicity without first giving clear and reasonable warning to such individual...” (*Id.*)

4 32. On December 15, 2009, a sixty-day notice of violation, together with the requisite
5 certificate of merit, was provided to CVS, CAREMARK and various public enforcement agencies
6 stating that as a result of the DEFENDANTS’ sales of certain PRODUCTS, purchasers and users in
7 the State of California were being exposed to lead resulting from the reasonably foreseeable uses of
8 the PRODUCTS, without the individual purchasers and users first having been provided with a
9 “clear and reasonable warning” regarding such toxic exposures.

10 33. DEFENDANTS have each engaged in the manufacture, distribution and/or offering
11 of the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
12 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
13 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
14 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
15 believes that such violations will continue to occur into the future.

16 34. After receipt of the claims asserted in the sixty-day notice of violation, the
17 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
18 of action against DEFENDANTS under Proposition 65.

19 35. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
20 California by DEFENDANTS contained lead above the allowable state limits.

21 36. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
22 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
23 CHEMICAL.

24 37. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
25 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

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1 38. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined by
3 27 CCR § 25602(b).

4 39. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
5 PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact and/or
6 ingestion.

7 40. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
8 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
9 participation in the manufacture, distribution and/or offering for sale or use of the PRODUCTS to
10 individuals in the State of California.

11 41. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and/or other individuals in the State of California who were or who could become
13 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably
14 foreseeable use of the PRODUCTS.

15 42. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
16 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
17 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
18 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
19 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

23 44. As a consequence of the above-described acts, California Health & Safety Code
24 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or offering the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the LISTED CHEMICAL;

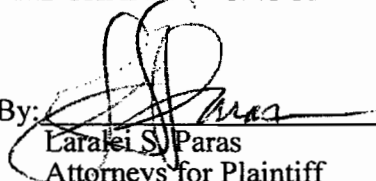
3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

Respectfully Submitted,

THE CHANLER GROUP

Dated: August 2, 2010

By: 
Laralei S. Paras
Attorneys for Plaintiff
RUSSELL BRIMER