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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE CITY AND COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,
14 Plaintiff,

15 v.

16 WILTON INDUSTRIES, INC.; and WILTON
17 BRANDS, INC.,
18 Defendants.

Case No. R G 10549553

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

VIA FAX

NATURE OF THE ACTION

1
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 the toxic chemical, lead, found in coated decorative staple bars 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 certain coated decorative staple bars that
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
9 California.

10 3. Excessive levels of lead are commonly found in coated decorative staple bars that
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
12 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. (*Title 27 of the California Code of Regulation*
22 (*“CCR”*) § 27001 (c); *Cal. Health & Safety Code § 25249.8.*)

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

1 Toxic Substances and Disease Registry report that the lead in the maternal blood can readily cross the
2 placenta barrier and enter the developing brain and nervous system of the fetus.

3 7. Lead shall hereinafter be collectively referred to as the "LISTED CHEMICAL."

4 8. Defendants manufacture, distribute, and/or sell coated decorative staple bars
5 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *EK Success*
6 *Fastenator Decorative Staple Bars, EKFSVP34 (#0 15586 65919 1)*. All such coated decorative
7 staple bars containing the LISTED CHEMICAL shall hereinafter be referred to as the
8 "PRODUCTS."

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

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

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

19 12. Plaintiff also seeks civil penalties against defendants for their violations of Proposition
20 65, as provided for by California Health & Safety Code § 25249.7(b).

21 **PARTIES**

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

26 14. Defendant WILTON INDUSTRIES, INC. is a person doing business within the
27 meaning of California Health & Safety Code § 25249.11.

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1 **FIRST CAUSE OF ACTION**

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

3 22. PLAINTIFF realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 21 inclusive.

5 23. The citizens of the State of California have expressly stated in Proposition 65 that they
6 must be informed “about exposures to chemicals that cause cancer, birth defects and other
7 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

11 25. -On December 15, 2009, PLAINTIFF provided a sixty-day notice of violation, together
12 with the requisite certificate of merit, to WILTON INDUSTRIES, INC., WILTON BRANDS, INC.,
13 and various public enforcement agencies stating that as a result of DEFENDANTS’ sales of certain
14 PRODUCTS, purchasers and users in the State of California were being exposed to lead resulting
15 from the reasonably foreseeable uses of these PRODUCTS, without the individual purchasers and
16 users first having been provided with a “clear and reasonable warning” regarding such toxic
17 exposures.

18 26. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
19 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
20 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use in
21 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
22 DEFENDANTS’ receipt of PLAINTIFF’s sixty-day notice of violation. PLAINTIFF further alleges
23 and believes that such violations will continue to occur into the future.

24 27. After receipt of the claims asserted in the sixty-day notice of violation, the appropriate
25 public enforcement agencies have neither commenced nor diligently prosecuted a cause of action
26 against DEFENDANTS under Proposition 65.

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1 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state limits.

3 29. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
4 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
5 CHEMICAL.

6 30. The LISTED CHEMICAL was present in the PRODUCTS in such a way as to expose
7 individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the
8 reasonably foreseeable use of the PRODUCTS.

9 31. The normal and reasonably foreseeable use of the PRODUCTS has caused and
10 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined by
11 27 CCR § 25602(b).

12 32. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
13 PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact and/or
14 ingestion.

15 33. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
16 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
17 participation in the manufacture, distribution, and/or offering for sale or use of PRODUCTS to
18 individuals in the State of California.

19 34. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
20 and/or other individuals in the State of California who were or who could become exposed to the
21 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable use
22 of the PRODUCTS.

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

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