

**ENDORSED
FILED**
San Francisco County Superior Court

APR - 2 2010

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

SEP - 3 2010 9:00 AM

DEPARTMENT 212

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 G & S METAL PRODUCTS COMPANY,
INC.; and DOES 1-600, inclusive,

16 Defendant.

Case No. **CGC-10-498319**

**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 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 certain vinyl coated tie 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 tie wire
8 that Defendant manufactures, distributes and/or offers for sale to consumers throughout the State
9 of California.

10 3. Elevated levels of lead have been identified in and on vinyl coated tie wire, such
11 as that contained in EZ Handy Helpers Twist Tie Dispenser (with cutter 100 Ft, No.2925 (#0
12 72867 9295 1)), that Defendants manufacture, distribute, and/or offer for sale to consumers and
13 businesses throughout the State of California.

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

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

24 6. Lead shall hereinafter be referred to as the "Listed Chemical."

25 7. Defendant G & S Metal Products Company, Inc. manufactures, distributes, and/or
26 sells vinyl coated wire containing excessive levels of the Listed Chemical, including, but not
27 limited to vinyl coated wire contained in EZ Handy Helpers Twist Tie Dispenser with cutter 100
28 Ft, No.2925 (#0 72867 9295 1).

1 8. All such vinyl coated wire as listed above in paragraph 7 shall hereinafter be
2 referred to as the "Products,"

3 9. Defendants' failures to warn consumers and/or other individuals in the State of
4 California about their exposure to the Listed Chemical in conjunction with Defendants' sale of
5 the Products is a violation of Proposition 65 and subjects Defendants to enjoinder of such
6 conduct as well as civil penalties for each such violation.

7 10. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary
8 injunctive and permanent injunctive relief to compel Defendants to provide purchasers or users
9 of the Products with the required warning regarding the health hazards of the Listed Chemical.
10 (*Cal. Health & Safety Code § 25249.7(a).*)

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

13 **PARTIES**

14 12. Plaintiff Russell Brimer is a citizen of the State of California who is dedicated to
15 protecting the health of California citizens through the elimination or reduction of toxic
16 exposures from commercial products, and brings this action in the public interest pursuant to
17 California Health & Safety Code § 25249.7.

18 13. Defendant, G & S Metal Products Company, Inc. ("G & S Metal Products" or
19 "Defendant") is a person doing business within the meaning of California Health & Safety Code
20 § 25249.11.

21 14. Defendant G & S Metal Products manufactures, distributes, and/or offers the
22 Products for sale or use in the State of California or implies by their conduct that they
23 manufacture, distribute and/or offer the Products for sale or use in the State of California.

24 15. Defendant DOES 1-200 ("Manufacturer Defendants") are each persons doing
25 business within the meaning of California Health & Safety Code § 25249.11.

26 16. Manufacturer Defendants engage in the process of research, testing, designing,
27 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
28

1 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
2 more of the Products for sale or use in the State of California.

3 17. Defendant DOES 201-400 (“Distributor Defendants”) are each persons doing
4 business within the meaning of California Health & Safety Code § 25249.11.

5 18. Distributor Defendants distribute, exchange, transfer, process and/or transport one
6 or more of the Products to individuals, businesses or retailers for sale or use in the State of
7 California.

8 19. Defendant DOES 401-600 (“Retailer Defendants”) are each persons doing
9 business within the meaning of California Health & Safety Code § 25249.11.

10 20. Retailer Defendants offer the Products for sale primarily to individuals in the
11 State of California.

12 21. At this time, the true names of Defendant DOES 1 through 600, inclusive, are
13 unknown to Plaintiff, who therefore sues said Defendant by their fictitious name pursuant to
14 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
15 each of the fictitiously named Defendants is responsible for the acts and occurrences herein
16 alleged. When ascertained, their true names shall be reflected in an amended complaint.

17 22. Defendant G & S Metal Products, Retailer Defendants, Distributor Defendants
18 and Manufacturer Defendants shall hereafter be collectively referred to as “Defendants”

19 **VENUE AND JURISDICTION**

20 23. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
21 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
22 because one or more instances of wrongful conduct occurred, and continues to occur, in the City
23 and County of San Francisco and/or because Defendants conducted, and continue to conduct,
24 business in this County with respect to the Products.

25 24. The California Superior Court has jurisdiction over this action pursuant to
26 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
27 all causes except those given by statute to other trial courts.” The statute under which this action
28 is brought does not specify any other basis of subject matter jurisdiction.

1 25. The California Superior Court has jurisdiction over Defendants based on
2 Plaintiff's information and good faith belief that each Defendant is a person, firm, corporation or
3 association that either are citizens of the State of California, have sufficient minimum contacts in
4 the State of California, or otherwise purposefully avail themselves of the California market.
5 Defendants' purposeful availment renders the exercise of personal jurisdiction by California
6 courts consistent with traditional notions of fair play and substantial justice.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Proposition 65 – Against All Defendants)**

9 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 25, inclusive.

11 27. The citizens of the State of California have expressly stated in the Safe Drinking
12 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
13 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
14 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

19 29. On December 15, 2009, a sixty-day notice of violation, together with the requisite
20 certificate of merit, was provided to G & S Metal Products and various public enforcement
21 agencies stating that as a result of G & S Metal Products' sales of the Products listed above in
22 paragraph 7, purchasers and users in the State of California were being exposed to the Listed
23 Chemical resulting from the reasonably foreseeable uses of the Products, without the individual
24 purchasers and users first having been provided with a “clear and reasonable warning” regarding
25 such toxic exposures; and

26 30. Defendants have engaged in the manufacture, distribution and/or offering of the
27 Products for sale or use in violation of California Health & Safety Code § 25249.6 and
28 Defendants' manufacture, distribution and/or offering of the Products for sale or use in violation

1 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendants'
2 receipt of Plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such
3 violations will continue to occur into the future.

4 31. After receipt of the claims asserted in the sixty-day notices of violation, the
5 appropriate public enforcement agencies have failed to commence and diligently prosecute a
6 cause of action against Defendants under Proposition 65.

7 32. The Products manufactured, distributed, and/or offered for sale or use in
8 California by Defendants contained the Listed Chemical above the allowable state limits.

9 33. Defendants knew or should have known that the Products manufactured,
10 distributed, and/or offered for sale or use by Defendant in California contained the Listed
11 Chemical.

12 34. The Listed Chemical was present in or on the Products in such a way as to expose
13 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably
14 foreseeable use of the Products.

15 35. The normal and reasonably foreseeable use of the Products has caused and
16 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
17 27 CCR § 25602(b).

18 36. Defendants had knowledge that the normal and reasonably foreseeable use of the
19 Products would expose individuals to the Listed Chemical through dermal contact and/or
20 ingestion.

21 37. Defendants, and each of them, intended that such exposures to the Listed
22 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,
23 non-accidental participation in the manufacture, distribution and/or offer for sale or use of
24 Products to individuals in the State of California.

25 38. Defendants failed to provide a "clear and reasonable warning" to those consumers
26 and/or other individuals in the State of California who were or who could become exposed to the
27 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use
28 of the Products.

1 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
 2 directly by California voters, individuals exposed to the Listed Chemical through dermal contact
 3 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by
 4 Defendants without a "clear and reasonable warning," have suffered, and continue to suffer,
 5 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

6 40. As a consequence of the above-described acts, Defendants, and each of them, are
 7 liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
 8 Health & Safety Code § 25249.7(b).

9 41. As a consequence of the above-described acts, California Health & Safety Code
 10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

11 42. Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as
 12 set forth hereinafter.


13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for judgment against Defendants as follows:

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

23 Dated: March 31, 2010

24 Respectfully Submitted,
 25 THE CHANLER GROUP

26 By: 
 27 Gregory M. Sheffer
 28 Attorneys for Plaintiff
 RUSSELL BRIMER