

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JUL 23 2010

CLERK OF THE COURT  
Superior Court of California, County of San Francisco  
BY: DENNIS TOYAMA DEPUTY CLERK

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 CHRONICLE BOOKS, LLC, PAUL FRANK  
16 INDUSTRIES, INC. and DOES 1-600,  
17 inclusive,

18 Defendant.

Case No. CCC-10-501868

COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF

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

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 lead found in certain Paul Frank Julius journals sold in California.

5           2.       Defendants manufacture, distribute, and/or offer for sale the Paul Frank Julius  
6 journals containing lead to consumers and businesses throughout the State of California.

7           3.       Plaintiff seeks to remedy Defendants' failures to warn California citizens about  
8 their exposure to lead present in or on the manufactured, distributed or sold Paul Frank  
9 journals.

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

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

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

20          7.       The specific products manufactured, distributed, and/or sold by Defendants that  
21 contain excessive levels of the Listed Chemical, include, but not limited to the assorted Paul  
22 Frank Julius Journals including, but not limited to, product ISBN 978-0-8118-6179-3.

23          8.       All such Journals as listed above in paragraph 7 shall hereinafter be referred to as  
24 the "Products."

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



1 19. Defendant DOES 201-400 ("Distributor Defendants") are each persons doing  
2 business within the meaning of California Health & Safety Code § 25249.11.

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

6 21. Defendant DOES 401-600 ("Retailer Defendants") are each persons doing  
7 business within the meaning of California Health & Safety Code § 25249.11.

8 22. Retailer Defendants offer the Products for sale primarily to individuals in the  
9 State of California.

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

15 24. Defendants Chronicle Books, Paul Frank, Retailer Defendants, Distributor  
16 Defendants and Manufacturer Defendants shall hereafter be collectively referred to as  
17 "Defendants"

18 **VENUE AND JURISDICTION**

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

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

1 27. 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  
3 or association that either are citizens of the State of California, have sufficient minimum contacts  
4 in 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 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
10 Paragraphs 1 through 27, inclusive.

11 29. 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 30. Proposition 65 states, "No person in the course of doing business shall  
16 knowingly and intentionally expose any individual to a chemical known to the state to cause  
17 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
18 individual...." (*Id.*)

19 31. On February 12, 2010, a sixty-day notice of violation, together with the requisite  
20 certificate of merit, was provided to Paul Frank, Chronicle Books and various public  
21 enforcement agencies stating that as a result of Chronicle Books' sales of the Products listed  
22 above in paragraph 7, purchasers and users in the State of California were being exposed to the  
23 Listed Chemical resulting from the reasonably foreseeable uses of the Products, without the  
24 individual purchasers and users first having been provided with a "clear and reasonable  
25 warning" regarding such toxic exposures; and

26 32. 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 plaintiff is  
28 informed and believes that Defendants' manufacture, distribution and/or offering of the

1 sold by Defendants without a "clear and reasonable warning," have suffered, and continue to  
2 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

8 43. Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as  
9 set forth hereinafter.

10 **PRAYER FOR RELIEF**

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

12 1. That the Court assess civil penalties against Defendants, and each of them, in the  
13 amount of \$2,500 per day for each violation alleged herein (H&S Code § 25249.7(b));

14 2. That the Court preliminarily and permanently enjoin Defendants, and each of  
15 them, from manufacturing, distributing or offering the Products for sale or use in California,  
16 without providing "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the  
17 harms associated with exposures to the Listed Chemical (H&S Code § 25249.7(a));


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

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

20  
21 Dated: July 22, 2010

Respectfully Submitted,

22 THE CHANLER GROUP

23  
24 By:   
25 Gregory M. Sheffer, Esq.  
26 Attorneys for Plaintiff  
27 RUSSELL BRIMER  
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