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**ENDORSED
FILED**
San Francisco County Superior Court

SEP - 9 2010

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

FEB 10 2011 9⁰⁰ AM

DEPARTMENT 212

6 Attorneys for Plaintiff
7 RUSSELL BRIMER

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE CITY AND COUNTY OF SAN FRANCISCO

11 UNLIMITED CIVIL JURISDICTION

12 CGC - 10 - 503371

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 DOLLAR EMPIRE, LLC; and DOES 1-150,
17 inclusive,

18 Defendants.

Case No. _____

**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 colored, vinyl-
5 coated paper fasteners 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 colored, vinyl-
8 coated paper fasteners that defendants manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of lead are commonly found in and on colored, vinyl-coated paper
11 fasteners that defendants manufacture, distribute, and/or offer for sale to consumers throughout
12 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 course
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 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 colored, vinyl-coated paper
25 fasteners containing excessive levels of the LISTED CHEMICAL including, but not limited to,
26 those found in the *Family Maid Stationery Set, #1644 (#8 27680 16644 0)*. All such colored,
27 vinyl-coated paper fasteners containing the LISTED CHEMICAL shall hereinafter be referred to
28 as the "PRODUCTS."

1 the State of California, or otherwise purposefully avails itself 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 (*Ibid.*)

16 27. On February 12, 2010, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to DOLLAR EMPIRE, and various public enforcement
18 agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and
19 users in the State of California were being exposed to lead resulting from the reasonably
20 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
21 been provided with 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 Title 27 California Code of Regulations (“C.C.R.”) section 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.

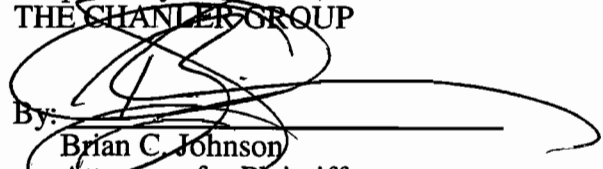
10 **PRAYER FOR RELIEF**

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 C.C.R. § 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: September 8, 2010

24 Respectfully Submitted,
25 THE CHANLER GROUP

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