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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: D. Taylor Deputy

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

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 SA&E International Bags & Accessories,
16 LLC.; and DOES 1-600,

17 Defendant.

Case No. CIV 1006338

**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 Tote bags sold in California.

5 2. By this Complaint, Plaintiff seeks to remedy Defendants' continuing failures to
6 warn California citizens about their exposure to lead present in and on certain organizer bags by
7 Totes (including but not limited to Work Essentials style #TH2189 (#7 68410 21890 2)).

8 3. Elevated levels of lead have been identified in and on such organizer bags that
9 Defendant manufactures, distributes, and/or offers for sale to consumers and businesses
10 throughout the State of California.

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

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

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

22 7. Defendant SA&E International Bags & Accessories, LLC manufactures,
23 distributes, and/or sells Totes organizer bags containing excessive levels of the Listed Chemical,
24 including, but not limited to Work Essentials style #TH2189 (#7 68410 21890 2).

25 8. All such organizer bags as listed above in paragraph 7 shall hereinafter be referred
26 to as the "Products."

27 9. Defendant's failures to warn consumers and/or other individuals in the State of
28 California about their exposure to the Listed Chemical in conjunction with Defendant's sale of

1 the Products is a violation of Proposition 65 and subjects Defendant to enjoinder of such
2 conduct as well as civil penalties for each such violation.

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

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

9 **PARTIES**

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

14 13. Defendant, SA&E International Bags & Accessories, LLC ("SA&E" or
15 "Defendant"), is a person doing business within the meaning of California Health & Safety Code
16 § 25249.11.

17 14. Defendant SA&E manufactures, distributes, and/or offers the Products for sale or
18 use in the State of California or implies by their conduct that they manufacture, distribute and/or
19 offer the Products for sale or use in the State of California.

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

22 16. Manufacturer Defendants engage in the process of research, testing, designing,
23 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
24 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
25 more of the Products for sale or use in the State of California.

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

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

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

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

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

13 22. Defendant SA&E, Retailer Defendants, Distributor Defendants and Manufacturer
14 Defendants shall hereafter be collectively referred to as “Defendants”

15 **VENUE AND JURISDICTION**

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

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

26 25. The California Superior Court has jurisdiction over Defendants based on
27 Plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in

1 the State of California, or otherwise purposefully avail themselves 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 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 25, inclusive.

8 27. 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 § 25249.5, *et seq.*
10 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
11 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

12 28. Proposition 65 states, “No 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 (*Id.*)

16 29. On February 12, 2010, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to SA&E and various public enforcement agencies stating that
18 as a result of SA&E manufacture and sale of the Products listed above in paragraph 7, purchasers
19 and users in the State of California were being exposed to the Listed Chemical resulting from the
20 reasonably foreseeable uses of the Products, without the individual purchasers and users first
21 having been provided with a “clear and reasonable warning” regarding such toxic exposures; and

22 30. Defendants have engaged in the manufacture, distribution and/or offering of the
23 Products for sale or use in violation of California Health & Safety Code § 25249.6 and plaintiff
24 is informed and believes that Defendants' manufacture, distribution and/or offering of the
25 Products for sale or use in violation of California Health & Safety Code § 25249.6 has continued
26 to occur beyond Defendants' receipt of Plaintiff's sixty-day notice of violation. Plaintiff further
27 alleges and believes that such violations will continue to occur into the future.

1 31. 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 32. The Products manufactured, distributed, and/or offered for sale or use in
5 California by Defendants contained the Listed Chemical.

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

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

12 35. The normal and reasonably foreseeable use of the Products has caused and
13 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
14 27 CCR § 25602(b).

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

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

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

26 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
27 directly by California voters, individuals exposed to the Listed Chemical through dermal contact
28 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by

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

3 40. 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 41. 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 42. 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));

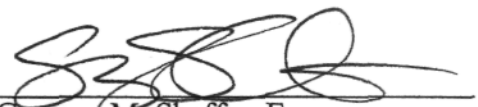
18 3. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and

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

20 Dated: December 1, 2010

Respectfully Submitted,

21 THE CHANLER GROUP

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