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FILED

JUL 13 2010

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hendryx, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 PACIFIC CONNECTIONS, INC.; and DOES
15 1-150, inclusive,

16 Defendants.

Case No. CIV 1003621

**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 vinyl handbag handles
5 sold in California, and di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl
6 handbags sold in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
8 warn California citizens about their exposure to lead, present in or on certain vinyl handbag
9 handles, and DEHP, present in vinyl handbags, that defendants manufacture, distribute and/or
10 offer for sale to consumers throughout the State of California.

11 3. 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
13 of doing business shall knowingly and intentionally expose any individual to a chemical known
14 to 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 4. On February 27, 1987, California identified and listed lead as a chemical known
17 to cause birth defects and other reproductive harm. Lead became subject to the warning
18 requirement one year later and was therefore subject to the "clear and reasonable warning"
19 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*
20 *Health & Safety Code § 25249.8.*)

21 5. On October 24, 2003, California identified and listed DEHP as a chemical known
22 to cause birth defects and other reproductive harm. DEHP became subject to the warning
23 requirement one year later and was therefore subject to the "clear and reasonable warning"
24 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal.*
25 *Health & Safety Code § 25249.8.*)

26 6. Lead and DEHP shall be referred to collectively hereinafter as the "LISTED
27 CHEMICALS."
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1 Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 County with respect to the PRODUCTS.

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

7 24. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
9 association that either are citizens of the State of California, have sufficient minimum contacts
10 in the State of California, or otherwise purposefully avail themselves of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

15 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 24, inclusive.

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

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

25 28. On July 17, 2009, a sixty-day notice of violation, together with the requisite
26 certificate of merit, was provided to PACIFIC CONNECTIONS and various public enforcement
27 agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers
28

1 and users in the State of California were being exposed to lead resulting from the reasonably
2 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
3 been provided with a “clear and reasonable warning” regarding such toxic exposures.

4 29. On May 7, 2010, another sixty-day notice of violation, together with the requisite
5 certificate of merit, was provided to PACIFIC CONNECTIONS and various public enforcement
6 agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers
7 and users in the State of California were being exposed to DEHP resulting from the reasonably
8 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
9 been provided with a “clear and reasonable warning” regarding such toxic exposures.

10 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
11 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
12 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
13 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
14 DEFENDANTS’ receipt of plaintiff’s sixty-day notices of violation. Plaintiff further alleges
15 and believes that such violations will continue to occur into the future.

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

19 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
20 California by DEFENDANTS contained the LISTED CHEMICALS above the allowable state
21 limits.

22 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
23 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
24 LISTED CHEMICALS.

25 34. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way
26 as to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion, and/or
27 inhalation during the reasonably foreseeable use of the PRODUCTS.
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1 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause consumer and occupational exposures to the LISTED CHEMICALS, as such
3 exposure is defined by 27 CCR § 25602(b).

4 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
5 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal
6 contact, ingestion, and/or inhalation.

7 37. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
8 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
9 accidental participation in the manufacture, distribution and/or offer for sale or use of
10 PRODUCTS to individuals in the State of California.

11 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and/or other individuals in the State of California who were or who could become
13 exposed to the LISTED CHEMICALS through dermal contact, ingestion, and/or inhalation
14 during the reasonably foreseeable use of the PRODUCTS.

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

20 40. As a consequence of the above-described acts, DEFENDANTS are liable for a
21 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
22 Safety Code § 25249.7(b).

23 41. As a consequence of the above-described acts, California Health & Safety Code
24 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.

26 42. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
27 hereinafter.
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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
4 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
5 alleged herein;

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
8 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
9 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures the
10 LISTED CHEMICAL;

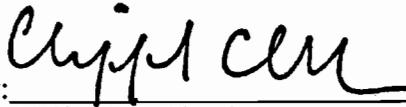
11 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

12 4. That the Court grant such other and further relief as may be just and proper.

13 Respectfully Submitted,

14 THE CHANLER GROUP

15 Dated: July 13, 2010

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17 By: _____

18 Clifford A. Chanler
19 Attorneys for Plaintiff
20 RUSSELL BRIMER
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