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ENDORSED
FILED
ALAMEDA COUNTY
OCT 22 2010
CLERK OF THE SUPERIOR COURT
By F. Wilson
Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 URBAN OUTFITTERS, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

Case No. RG 10543129

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

10 3. High levels of lead are commonly found in and on vinyl-coated tape measures
11 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State
12 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”), “No 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 CCR § 27001 (c); Cal.*
22 *Health & Safety Code § 25249.8.*) Lead shall be referred to hereinafter as the “LISTED
23 CHEMICAL.”

24 6. Defendants manufacture, distribute, and/or sell vinyl-coated tape measures
25 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the
26 *Smartek Compact Foldaway Sewing Box, Model RX-24C, Item #16848327 (#8 92013 00050 0).*
27 All such vinyl-coated tape measures containing the LISTED CHEMICAL shall hereinafter be
28 referred to as the “PRODUCTS.”

1 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
2 doing business within the meaning of California Health & Safety Code § 25249.11.

3 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
4 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
5 the State of California.

6 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
7 doing business within the meaning of California Health & Safety Code § 25249.11.

8 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
9 State of California.

10 19. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
11 unknown to plaintiff, who therefore sues said defendants 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 20. URBAN OUTFITTERS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
17 referred to hereinafter as “DEFENDANTS.”

18 VENUE AND JURISDICTION

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

24 22. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
26 in 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.

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1 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges
2 and believes that such violations will continue to occur into the future.

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

6 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

9 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
11 LISTED CHEMICAL.

12 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
13 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
14 during the reasonably foreseeable use of the PRODUCTS.

15 33. 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
17 defined by 27 CCR § 25602(b).

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
20 and/or ingestion.

21 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
22 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
23 accidental participation in the manufacture, distribution and/or offer for sale or use of
24 PRODUCTS to individuals in the State of California.


25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and/or other individuals in the State of California who were or who could become
27 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
28 reasonably foreseeable use of the PRODUCTS.

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,
THE CHANLER GROUP

Dated: October 21, 2010

By: 
Jennifer Henry
Attorneys for Plaintiff
RUSSELL BRIMER