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K. TORRE CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____, Deputy Clerk

C. Green

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF CONTRA COSTA
10 UNLIMITED CIVIL JURISDICTION

11
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 MAKING MEMORIES WHOLESALE, INC.;
and DOES 1-150, inclusive,

16 Defendants.
17

Case No. _____

C 10-03254

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 01

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 wristlets sold in
5 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 wristlets that
8 defendants import, manufacture, distribute, and/or offer for sale to consumers throughout the
9 State of California.

10 3. High levels of lead are commonly found in and on wristlets that defendants
11 import, manufacture, distribute, and/or offer for sale to consumers throughout the State of
12 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 import, manufacture, distribute, and/or sell wristlets containing
25 excessive levels of the LISTED CHEMICAL including, but not limited to, *The Runway*
26 *Collection Wristlet, Item #27188 (#6 04062 27188 2)*. All such wristlets containing the
27 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."
28

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
5 in the State of California.

6 17. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each persons doing
7 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. MAKING MEMORIES, 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 Contra Costa 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
22 County of Contra Costa and/or because DEFENDANTS conducted, and continue to conduct,
23 business in this 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.
28

1 Plaintiff further alleges and believes that such violations will continue to occur into the future.

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

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

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

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

14 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
15 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
16 defined by 27 CCR § 25602(b).

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

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

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

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

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

9 39. As a consequence of the above-described acts, California Health & Safety Code
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 **PRAYER FOR RELIEF**

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

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

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

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

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

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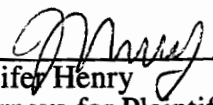
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Dated: November 12, 2010

Respectfully Submitted,
THE CHANLER GROUP

By: 
Jennifer Henry
Attorneys for Plaintiff
RUSSELL BRIMER