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

RUSSELL BRIMER,  
Plaintiff,  
v.

LOGO CHAIR, INC.; and DOES 1-150,  
inclusive,  
Defenda

Case No. CG 10544353

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*fety Code § 25249.6 et seq.)*

*Prepare for filing  
on Friday*

**NATURE OF THE ACTION**

1  
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 folding chairs sold in  
5 California.

6           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about their exposures to lead, present in or on certain folding chairs that  
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
9 California.

10          3.     High levels of lead are commonly found in and on folding chairs that defendants  
11 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

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

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

23          6.     Defendants manufacture, distribute, and/or sell folding chairs containing  
24 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Folding Chair,*  
25 *Anaheim Angels.* All such folding chairs containing the LISTED CHEMICAL shall hereinafter  
26 be referred to as the “PRODUCTS”.

27          7.     Defendants’ failures to warn consumers and/or other individuals in the State of  
28 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’

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

3 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
4 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
5 PRODUCTS with the required warning regarding the health hazards of the LISTED  
6 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

9 **PARTIES**

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

14 11. Defendant LOGO CHAIR, INC. ("LOGO CHAIR") is a person doing business  
15 within the meaning of California Health & Safety Code Section 25249.11.

16 12. Defendant LOGO CHAIR manufactures, distributes, and/or offers the  
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
18 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
19 California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
21 persons doing business within the meaning of California Health & Safety Code Section  
22 25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
24 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
25 engage in the process of research, testing, designing, assembling, fabricating, and/or  
26 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

27 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
28 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

4 17. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
5 business within the meaning of California Health & Safety Code Section 25249.11.

6 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
7 State of California.

8 19. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
9 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
10 California Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that  
11 basis alleges, that each of the fictitiously named defendants is responsible for the acts and  
12 occurrences herein alleged. When ascertained, their true names shall be reflected in an  
13 amended complaint.

14 20. LOGO CHAIR, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
15 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be  
16 referred to hereinafter as "DEFENDANTS."

### 17 VENUE AND JURISDICTION

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

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

27 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
28 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or

1 association that either are citizens of the State of California, have sufficient minimum contacts  
2 in the State of California, or otherwise purposefully avail themselves of the California market.  
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
8 Paragraphs 1 through 23, inclusive.

9 25. The citizens of the State of California have expressly stated in the Safe Drinking  
10 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*  
11 ("Proposition 65") that they must be informed "about exposures to chemicals that cause cancer,  
12 birth defects and other reproductive harm". (*Cal. Health & Safety Code § 25249.6.*)

13 26. Proposition 65 states, "No person in the course of doing business shall knowingly  
14 and intentionally expose any individual to a chemical known to the state to cause cancer or  
15 reproductive toxicity without first giving clear and reasonable warning to such individual..."  
16 (*Id.*)

17 27. On June 17, 2010, a sixty-day notice of violation, together with the requisite  
18 certificate of merit, was provided to LOGO CHAIR and various public enforcement agencies  
19 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in  
20 the State of California were being exposed to lead resulting from the reasonably foreseeable  
21 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
22 with a "clear and reasonable warning" regarding such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
24 the PRODUCTS for sale or use in violation of California Health & Safety Code Section  
25 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for  
26 sale or use in violation of California Health & Safety Code Section 25249.6 has continued to  
27 occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff  
28 further alleges and believes that such violations will continue to occur into the future.

1           29. After receipt of the claims asserted in the sixty-day notice 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 uses in  
5 California by DEFENDANTS contain 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  
15 defined by 27 CCR 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 Section 25249.7(b).

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

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
3 follows:

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

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

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

13 4. That the Court grant such other and further relief as may be just and proper.  
14

15 Dated: October 28, 2010

Respectfully submitted,

16 THE CHANLER GROUP

17  
18 By: 

19 Stephen S. Sayad  
20 Attorneys for Plaintiff  
21 RUSSELL BRIMER  
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