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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 TEST-RITE PRODUCTS CORP.;
16 and DOES 1-150, inclusive,

17 Defendants.
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Case No. CG 1054392

**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,
3 in 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 trolley jack handles with grips sold in
5 California.

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

10 3. High levels of lead are commonly found in and on trolley jack handles with grips
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 Section 25249.6 *et seq.* ("Proposition 65"), "No person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

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

24 6. Defendants manufacture, distribute, and/or sell trolley jack handles with grips
25 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *GM*
26 *Performance Parts 2 Ton Hydraulic Trolley Jack, GM7002 (#7 00305 67002 0)*. All such trolley
27 jack handles with grips containing the LISTED CHEMICAL shall hereinafter be referred to as
28 the "PRODUCTS".

1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 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 Section 25249.5, *et*
11 *seq.* ("Proposition 65") that they must be informed "about exposures to chemicals that cause
12 cancer, 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 TEST-RITE and various public enforcement agencies stating
19 that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the
20 State of California are being exposed to lead resulting from the reasonably foreseeable uses of
21 the PRODUCTS, without the individual purchasers and users first having been provided with a
22 "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 25249.6
25 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or
26 use in violation of California Health & Safety Code Section 25249.6 has continued to occur
27 beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further
28 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 use in
5 California by DEFENDANTS contained 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 defined
15 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.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
12 follows:

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

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

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

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

23 Dated: October 27, 2010

Respectfully submitted,

24 THE CHANLER GROUP

25
26 By: 

27 Stephen S. Sayad
28 Attorneys for Plaintiff
RUSSELL BRIMER