

ENDORSED
FILED
ALAMEDA COUNTY
10 NOV 15 PM 3:35
CLERK OF THE SUPERIOR COURT
BY BARBARA C. YOUNG, DEPUTY

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

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

12 RUSSELL BRIMER,
13 Plaintiff,

14 v.

15 BIG 5 SPORTING GOODS CORPORATON;
16 and DOES 1-150, inclusive,
17 Defendants.

Case No. R G 10546427

**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 accessory sports bag tags
5 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 accessory sports
8 bag tags that defendants import, 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 accessory sports bag tags that
11 defendants import, manufacture, distribute, and/or offer for sale to consumers throughout the
12 State 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 import, manufacture, distribute, and/or sell accessory sports bag tags
25 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the
26 *Accessory Sports Athletic Bag Tag, #03982329*. All such accessory sports bag tags containing
27 the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."
28

1 doing business within the meaning of California Health & Safety Code § 25249.11.

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

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

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

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

14 20. BIG 5, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
15 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to hereinafter
16 as “DEFENDANTS.”

17 **VENUE AND JURISDICTION**

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

23 22. The California Superior Court has jurisdiction over this action pursuant to
24 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
25 in all causes except those given by statute to other trial courts.” The statute under which this
26 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,

1 or association that either is a citizen of the State of California, has sufficient minimum contacts
2 in the State of California, or otherwise purposefully avails itself 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 Proposition 65 that
10 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
11 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

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

16 27. On July 1, 2010, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to BIG 5 and various public enforcement agencies stating that
18 as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of
19 California were being exposed to lead resulting from the reasonably foreseeable uses of the
20 PRODUCTS, without the individual purchasers and users first having been provided with a
21 "clear and reasonable warning" regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the importation, manufacture, distribution,
23 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
24 Code § 25249.6 and DEFENDANTS' importation, manufacture, distribution, and/or offering of
25 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
26 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation.
27 Plaintiff 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 imported, manufactured, distributed, and/or offered for sale or
5 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable
6 state limits.

7 31. DEFENDANTS knew or should have known that the PRODUCTS imported,
8 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California
9 contained the 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 § 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 importation, manufacture, distribution, and/or offer for sale or use
22 of 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 § 25249.7(b).

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

10 **PRA YER FOR RELIEF**

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

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

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

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

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

22
23 Respectfully Submitted,

24 THE CHANLER GROUP

25
26 By: 

27 Josh Voorhees
28 Attorneys for Plaintiff
RUSSELL BRIMER

24 Dated: November 15, 2010