

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Attorneys for Plaintiff
RUSSELL BRIMER

FILED
Superior Court Of California,
Sacramento
11/12/2010
IgnietreeZ
By _____, Deputy
Case Number:
34-2010-00091510

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

Department
Assignments
Case Management 44
Law and Motion 53
Minors Compromise 38

RUSSELL BRIMER,

Plaintiff,

v.

AVON PRODUCTS, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

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 di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in handbags, bags/cases for toiletries, and bags/cases for cosmetics sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens and others about their exposure to DEHP present in or on certain in
8 handbags, bags/cases for toiletries, and bags/cases for cosmetics that defendants manufacture,
9 distribute, and/or offer for sale to consumers throughout the State of California.

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

15 4. On October 23, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was therefore subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendants manufacture, import, distribute, and/or sell handbags and bags/cases
21 for toiletries or cosmetics containing DEHP including, but not limited to, the *Handbag, Brown*
22 *#410019853; Foot Works Summer Steppin Gift Set, #F3316871(#0 94000 52415 4); and Avon*
23 *Cosmetic Wedge Applicator, #F3216151 (#0 94000 32910 0).* All such handbags and
24 bags/cases for toiletries or cosmetics containing DEHP shall hereinafter be referred to as the
25 “PRODUCTS.”

26 6. Defendants’ failures to warn consumers and/or other individuals in the State of
27 California about their exposure to DEHP in conjunction with defendants’ sale of the
28 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such

1
2 conduct as well as civil penalties for each such violation.

3 7. 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 DEHP. (*Cal. Health &*
6 *Safety Code § 25249.7(a).*)

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

9 **PARTIES**

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

14 10. Defendant AVON PRODUCTS, INC. ("AVON") is a person doing business
15 within the meaning of California Health & Safety Code § 25249.11.

16 11. Defendant AVON manufactures, imports, 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, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
19 California.

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

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

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

1 in the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 22, inclusive.

8 24. The citizens of the State of California have expressly stated in Proposition 65 that
9 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
10 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

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

15 26. On August 5 2010, a sixty-day notice of violation, which supplemented a July 17,
16 2009 sixty-day notice, together with the requisite certificate of merit, was provided to AVON
17 and various public enforcement agencies stating that as a result of the DEFENDANTS' sales of
18 the PRODUCTS, purchasers and users in the State of California are being exposed to DEHP
19 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
20 purchasers and users first having been provided with a "clear and reasonable warning"
21 regarding such toxic exposures.

22 27. DEFENDANTS have engaged in the manufacture, importation, distribution,
23 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
24 Code § 25249.6 and AVON'S manufacture, importation, distribution, and/or offering of the
25 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 August 5, 2010 sixty-day
27 notice of violation. Plaintiff further alleges and believes that such violations will continue to
28 occur into the future.

1 28. After receipt of the claims asserted in the August 5, 2010 sixty-day notice of
2 violation, the appropriate public enforcement agencies have failed to commence and diligently
3 prosecute a cause of action against DEFENDANTS under Proposition 65.

4 29. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
5 use in California by DEFENDANTS contained DEHP above the allowable state limits.

6 30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
8 DEHP.

9 31. DEHP was present in or on the PRODUCTS in such a way as to expose
10 individuals to DEHP through dermal contact, ingestion and/or inhalation, during the reasonably
11 foreseeable use of the PRODUCTS.

12 32. The normal and reasonably foreseeable use of the PRODUCTS has caused and
13 continues to cause consumer exposures to DEHP, as such exposure is defined by 27 CCR §
14 25602(b).

15 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
16 the PRODUCTS would expose individuals to DEHP through dermal contact, ingestion and/or
17 inhalation.

18 34. DEFENDANTS intended that such exposures to DEHP from the reasonably
19 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
20 in the manufacture, distribution, and/or offer for sale or use of PRODUCTS to individuals in the
21 State of California.

22 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those
23 consumers and/or other individuals in the State of California who were or who could become
24 exposed to DEHP through dermal contact, ingestion and/or inhalation during the reasonably
25 foreseeable use of the PRODUCTS.

26 Contrary to the express policy and statutory prohibition of Proposition 65, enacted directly by
27 California voters, individuals exposed to DEHP through dermal contact, ingestion and/or
28 inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by

1 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
2 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

9 38. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
10 hereinafter.

11 **PRAYER FOR RELIEF**

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

13 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
14 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 § 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 § 25601, as to the harms associated with exposures DEHP;


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 Dated: November 12, 2010

THE CHANLER GROUP

25
26 By: 
27 Clifford A. Chanler
28 Attorneys for Plaintiff
RUSSELL BRIMER