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ENDORSED  
FILED  
San Francisco County Superior Court

NOV 10 2010

CLERK OF THE COURT  
BY: PARAM NATT  
Deputy Clerk

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION  
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 ACCO BRANDS CORPORATION; OFFICE  
20 DEPOT, INC.; and DOES 1-150, inclusive,

21 Defendants.

Case No. CGC-10-505323

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

22 CASE MANAGEMENT CONFERENCE SET

23 APR 15 2011 9<sup>00</sup> AM

24 DEPARTMENT 212  
25  
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1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Russell Brimer, in  
3 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 zippered document folders and file  
5 storage/organizer boxes, 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 zippered document  
8 folders and file storage/organizer boxes, that defendants manufacture, distribute, and/or offer for  
9 sale to consumers throughout the State of California.

10 3. Elevated levels of lead are commonly found in and on zippered document folders  
11 and file storage/organizer boxes that defendants manufacture, distribute, and/or offer for sale to  
12 consumers and businesses throughout the 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, the State listed lead as a chemical known to cause birth  
19 defects and other reproductive harm. Lead became subject to the warning requirement one year  
20 later and was therefore subject to the “clear and reasonable warning” requirements of Proposition  
21 65, beginning on February 27, 1988. (*27 CCR § 27001(c); Cal. Health & Safety Code*  
22 *§ 25249.8.*)

23 6. Lead shall hereinafter be referred to as the “Listed Chemical.”

24 7. Defendants manufacture, distribute, and/or sell: (i) zippered document folders  
25 containing excessive levels of the Listed Chemical including, but not limited to, *Work Style by*  
26 *Wilson Jones Caramel Lace Zip Folder, #W31704, #12271P028 (#0 78910 31704 4)*; and (ii) file  
27 storage/organizer boxes containing excessive levels of the Listed Chemical including, but not  
28 limited to, *Work Style by Wilson Jones File Box, #W31701, #12271P024 (#0 78910 31701 3)*.

1           8. All such zippered document folders and file storage/organizer boxes containing  
2 the Listed Chemical, as listed above in paragraphs 7(i) and (ii) shall hereinafter be referred to as  
3 the “Products.”

4           9. Defendants’ failures to warn consumers and/or other individuals in the State of  
5 California about their exposure to the Listed Chemical in conjunction with defendants’ sale of  
6 the Products is a violation of Proposition 65 and subjects defendants to enjoinder of such  
7 conduct as well as civil penalties for each such violation.

8           10. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive  
9 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
10 Products with the required warning regarding the health hazards of the Listed Chemical. (*Cal.*  
11 *Health & Safety Code § 25249.7(a).*)

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

14    **PARTIES**

15           12. Plaintiff Russell Brimer is a citizen of the State of California who is dedicated to  
16 protecting the health of California citizens through the elimination or reduction of toxic  
17 exposures from commercial products, and brings this action in the public interest pursuant to  
18 California Health & Safety Code § 25249.7.

19           13. Defendant ACCO Brands Corporation (“ACCO”) is a person doing business  
20 within the meaning of California Health & Safety Code § 25249.11.

21           14. Defendant ACCO manufactures, distributes, and/or offers the Products for sale or  
22 use in the State of California or implies by its conduct that it manufactures, distributes and/or  
23 offers the Products for sale or use in the State of California.

24           15. Defendant Office Depot, Inc. (“Office Depot”) is a person doing business within  
25 the meaning of California Health & Safety Code § 25249.11.

26           16. Defendant Office Depot manufactures, distributes, and/or offers the Products for  
27 sale or use in the State of California or implies by its conduct that it manufactures, distributes  
28 and/or offers the Products for sale or use in the State of California.

1 17. Defendants DOES 1-50 (“Manufacturer Defendants”) are each persons doing  
2 business within the meaning of California Health & Safety Code § 25249.11.

3 18. Manufacturer Defendants engage in the process of research, testing, designing,  
4 assembling, fabricating, and/or manufacturing, or imply by their conduct that they engage in the  
5 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or  
6 more of the Products for sale or use in the State of California.

7 19. Defendants DOES 51-100 (“Distributor Defendants”) are each persons doing  
8 business within the meaning of California Health & Safety Code § 25249.11.

9 20. Distributor Defendants distribute, exchange, transfer, process, and/or transport  
10 one or more of the Products to individuals, businesses or retailers for sale or use in the State of  
11 California.

12 21. Defendants DOES 101-150 (“Retailer Defendants”) are each persons doing  
13 business within the meaning of California Health & Safety Code § 25249.11.

14 22. Retailer Defendants offer one or more of the Products for sale to individuals in the  
15 State of California.

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

21 24. Defendants ACCO, Office Depot, Manufacturer Defendants, Distributor  
22 Defendants, and Retailer Defendants shall, where appropriate, collectively be referred to  
23 hereinafter as “Defendants.”

24 **VENUE AND JURISDICTION**

25 25. Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
26 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,  
27 because one or more instances of wrongful conduct occurred, and continues to occur, in the City  
28

1 and County of San Francisco and/or because Defendants conducted, and continue to conduct,  
2 business in this County with respect to the Products.

3 26. The California Superior Court has jurisdiction over this action pursuant to  
4 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in  
5 all causes except those given by statute to other trial courts.” The statute under which this action  
6 is brought does not specify any other basis of subject matter jurisdiction.

7 27. The California Superior Court has jurisdiction over Defendants based on  
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
9 association that either are citizens of the State of California, have sufficient minimum contacts in  
10 the State of California, or otherwise purposefully avail themselves of the California market.  
11 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California  
12 courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 – Against All Defendants)**

15 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 27, inclusive.

17 29. The citizens of the State of California have expressly stated in Proposition 65 that  
18 they must be informed “about exposures to chemicals that cause cancer, birth defects and other  
19 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

20 30. Proposition 65 states, “No person in the course of doing business shall knowingly  
21 and intentionally expose any individual to a chemical known to the state to cause cancer or  
22 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
23 (*Id.*)

24 31. On August 5, 2010, a sixty-day notice of violation, together with the requisite  
25 certificate of merit, was provided to ACCO, Office Depot, and various public enforcement  
26 agencies stating that as a result of ACCO’s and Office Depot’s sales of the products listed above  
27 in paragraph 7(i), purchasers and users in the State of California were being exposed to the  
28 Listed Chemical resulting from the reasonably foreseeable uses of the Products, without the

1 individual purchasers and users first having been provided with a “clear and reasonable warning”  
2 regarding such toxic exposures.

3 32. On September 1, 2010, a sixty-day notice of violation, together with the requisite  
4 certificate of merit, was provided to ACCO, Office Depot, and various public enforcement  
5 agencies stating that as a result of ACCO’s and Office Depot’s sales of the products listed above  
6 in paragraph 7(ii), purchasers and users in the State of California were being exposed to the  
7 Listed Chemical resulting from the reasonably foreseeable uses of the Products, without the  
8 individual purchasers and users first having been provided with a “clear and reasonable warning”  
9 regarding such toxic exposures.

10 33. Defendants have engaged in the manufacture, distribution and/or offering of the  
11 Products for sale or use in violation of California Health & Safety Code § 25249.6 and  
12 Defendants’ manufacture, distribution and/or offering of the Products for sale or use in violation  
13 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendants’  
14 receipt of plaintiff’s sixty-day notices of violation. Plaintiff further alleges and believes that such  
15 violations will continue to occur into the future.

16 34. After receipt of the claims asserted in the sixty-day notices of violation, the  
17 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
18 cause of action against Defendants under Proposition 65.

19 35. The Products manufactured, distributed, and/or offered for sale or use in  
20 California by Defendants contained the Listed Chemical above the allowable state limits.

21 36. Defendants knew or should have known that the Products manufactured,  
22 distributed, and/or offered for sale or use by Defendants in California contained the Listed  
23 Chemical.

24 37. The Listed Chemical was present in or on the Products in such a way as to expose  
25 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably  
26 foreseeable use of the Products.

1           38.     The normal and reasonably foreseeable use of the Products has caused and  
2 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by  
3 27 Cal. Code Regs. § 25602(b).

4           39.     Defendants had knowledge that the normal and reasonably foreseeable use of the  
5 Products would expose individuals to the Listed Chemical through dermal contact and/or  
6 ingestion.

7           40.     Defendants, and each of them, intended that such exposures to the Listed  
8 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,  
9 non-accidental participation in the manufacture, distribution and/or offer for sale or use of  
10 Products to individuals in the State of California.

11          41.     Defendants failed to provide a “clear and reasonable warning” to those consumers  
12 and/or other individuals in the State of California who were or who could become exposed to the  
13 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use  
14 of the Products.

15          42.     Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
16 directly by California voters, individuals exposed to the Listed Chemical through dermal contact  
17 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by  
18 Defendants without a “clear and reasonable warning,” have suffered, and continue to suffer,  
19 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

20          43.     As a consequence of the above-described acts, Defendants, and each of them, are  
21 liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California  
22 Health & Safety Code § 25249.7(b).

23          44.     As a consequence of the above-described acts, California Health & Safety Code  
24 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against Defendants as follows:

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

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
7 preliminarily and permanently enjoin Defendants, and each of them, from manufacturing,  
8 distributing or offering the Products for sale or use in California, without providing “clear and  
9 reasonable warnings” as defined by 27 Cal. Code Regs. § 25601, as to the harms associated with  
10 exposures to the Listed Chemical;

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

12 4. That the Court grants such other and further relief as may be just and proper.

13 Respectfully Submitted,

14 Dated: November 10, 2010

THE CHANLER GROUP

15  
16 By: Laurence D. Haveson  
17 Laurence D. Haveson  
18 Attorneys for Plaintiff  
19 RUSSELL BRIMER  
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