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ALAMEDA COUNTY

10 DEC 28 PM 12:22

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

15 RUSSELL BRIMER,
16 Plaintiff,
17 v.
18 ULTRA PRO CORPORATION; and DOES 1-
19 150, inclusive,
20 Defendants.

21 Case No. RG 10553315

22 **COMPLAINT FOR CIVIL PENALTIES
23 AND INJUNCTIVE RELIEF**

24 *(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, 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 craft tools sold in California.

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

9 3. Elevated levels of lead are commonly found in and on craft tools that defendants
10 manufacture, distribute, and/or offer for sale to consumers and businesses throughout the State of
11 California.

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

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

22 6. Lead shall hereinafter be referred to as the "Listed Chemical."

23 7. Defendants manufacture, distribute, and/or sell craft tools containing excessive
24 levels of the Listed Chemical including, but not limited to, *7gypsies 1 pc Punch ATC, Stock*
25 *#12497 (#0 74427 12497 7)*. All such craft tools containing excessive levels of the Listed
26 Chemical shall hereinafter be referred to as the "Products."

27 8. Defendants' failures to warn consumers and/or other individuals in the State of
28 California about their exposure to the Listed Chemical in conjunction with defendants' sale of

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

3 9. 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 Chemical. (*Cal.*
6 *Health & Safety Code § 25249.7(a).*)

7 10. 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 11. Plaintiff Russell Brimer is a citizen of the State of California who is dedicated to
11 protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer products, and brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7.

14 12. Defendant Ultra Pro Corporation ("Ultra Pro") is a person doing business within
15 the meaning of California Health & Safety Code § 25249.11.

16 13. Defendant Ultra Pro manufactures, distributes, and/or offers the Products for sale
17 or use in the State of California or implies by its conduct that it manufactures, distributes, and/or
18 offers the Products for sale or use in the State of California.

19 14. Defendants DOES 1-50 ("Manufacturer Defendants") are each persons doing
20 business within the meaning of California Health & Safety Code § 25249.11.

21 15. Manufacturer Defendants engage in the process of researching, testing, designing,
22 assembling, fabricating, and/or manufacturing, or imply by their conduct that they engage in the
23 process of researching, testing, designing, assembling, fabricating, and/or manufacturing, one or
24 more of the Products for sale or use in the State of California.

25 16. Defendants DOES 51-100 ("Distributor Defendants") are each persons doing
26 business within the meaning of California Health & Safety Code § 25249.11.

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1 the State of California, or otherwise purposefully avail themselves of the California market.
2 Defendants' purposeful availment renders the exercise of personal jurisdiction by California
3 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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

8 26. 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 27. 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 28. On August 5, 2010, a sixty-day notice of violation, together with the requisite
16 certificate of merit, was provided to Ultra Pro and various public enforcement agencies stating
17 that as a result of Ultra Pro's sales of the Products, purchasers and users in the State of California
18 were being exposed to the Listed Chemical resulting from the reasonably foreseeable uses of the
19 Products, without the individual purchasers and users first having been provided with a "clear
20 and reasonable warning" regarding such toxic exposures.

21 29. Defendants have engaged in the manufacture, distribution, and/or offering of the
22 Products for sale or use in violation of California Health & Safety Code § 25249.6 and
23 Defendants' manufacture, distribution, and/or offering of the Products for sale or use in violation
24 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendants'
25 receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such
26 violations will continue to occur into the future.

27 30. After receipt of the claims asserted in the sixty-day notice of violation, the
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a

1 cause of action against Defendants under Proposition 65.

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

4 32. Defendants knew or should have known that the Products manufactured,
5 distributed, and/or offered for sale or use by Defendants in California contained the Listed
6 Chemical.

7 33. The Listed Chemical was present in or on the Products in such a way as to expose
8 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably
9 foreseeable use of the Products.

10 34. The normal and reasonably foreseeable use of the Products has caused and
11 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
12 27 CCR § 25602(b).

13 35. Defendants had knowledge that the normal and reasonably foreseeable use of the
14 Products would expose individuals to the Listed Chemical through dermal contact and/or
15 ingestion.

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

20 37. Defendants failed to provide a "clear and reasonable warning" to those consumers
21 and/or other individuals in the State of California who were or who could become exposed to the
22 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use
23 of the Products.

24 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
25 directly by California voters, individuals exposed to the Listed Chemical through dermal contact
26 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by
27 Defendants without a "clear and reasonable warning," have suffered, and continue to suffer,
28 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

