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**ENDORSED  
FILED**  
San Francisco County Superior Court

FEB 22 2011

CLERK OF THE COURT  
BY: PARAM NATT  
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

UTRECHT MANUFACTURING  
CORPORATION; and DOES 1 through 150,  
inclusive,

Defendants.

Case No. CGC-11-508435

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**VIA FAX**

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 messenger bags sold in  
5 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 certain messenger bags that  
8 defendants import, manufacture, distribute, and/or offer for sale to consumers throughout the  
9 State of California.

10 3. Elevated levels of lead are commonly found in and on messenger bags 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 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, 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 hereinafter be referred to as the "LISTED  
23 CHEMICAL".

24 6. Defendants import, manufacture, distribute, and/or sell messenger bags containing  
25 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Utrecht*  
26 *Messenger Bag, #39150 (#6 55802 39150 6)*. All such glassware with colored artwork or  
27 designs containing the LISTED CHEMICAL shall hereinafter be referred to as the  
28 "PRODUCTS".



1           14.   MANUFACTURER DEFENDANTS engage in the process of research, testing,  
2 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
3 engage in the process of research, testing, designing, assembling, fabricating and/or  
4 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

5           15.   Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
6 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

10          17.   Defendants DOES 101-150 (RETAILER DEFENDANTS) are each persons doing  
11 business within the meaning of California Health & Safety Code Section 25249.11.

12          18.   RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

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

19          20.   UTRECHT, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
21 referred to hereinafter as “DEFENDANTS”.

22   **VENUE AND JURISDICTION**

23          21.   Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil  
24 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
25 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
26 County of San Francisco and/or because DEFENDANTS conducted, and continue to conduct,  
27 business in this county with respect to the PRODUCTS.

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

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

11 **FIRST CAUSE OF ACTION**

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

13 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
14 Paragraphs 1 through 23, inclusive.

15 25. The citizens of the State of California have expressly stated in the Safe Drinking  
16 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5,  
17 *et seq.* that they must be informed “about exposures to chemicals that cause cancer, birth defects  
18 and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

23 27. On October 15, 2010, a sixty-day notice of violation, together with the requisite  
24 certificate of merit, was provided to UTRECHT and various public enforcement agencies  
25 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in  
26 the State of California were being exposed to lead resulting from the reasonably foreseeable  
27 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
28 with a “clear and reasonable warning” regarding such toxic exposures.

1           28. DEFENDANTS have engaged in the importation, manufacture, distribution,  
2 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety  
3 Code Section 25249.6, and DEFENDANTS' importation, manufacture, distribution, and/or  
4 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code  
5 Section 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
6 notices of violation. Plaintiff further alleges and believes that such violations will continue to  
7 occur into the future.

8           29. After receipt of the claims asserted in the sixty-day notice of violation, the  
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
10 cause of action against DEFENDANTS under Proposition 65.

11           30. The PRODUCTS imported, manufactured, distributed, and/or offered for sale or  
12 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable  
13 State limits.

14           31. DEFENDANTS knew or should have known that the PRODUCTS imported,  
15 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California  
16 contained the LISTED CHEMICAL.

17           32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
18 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
19 during the reasonably foreseeable use of the PRODUCTS.

20           33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
21 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is  
22 defined by 27 CCR Section 25602(b).

23           34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
24 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
25 and/or ingestion.

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1 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
2 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
3 accidental participation in the importation, manufacture, distribution, and/or offer for sale or use  
4 of PRODUCTS to individuals in the State of California.

5 36. DEFENDANTS failed and continue to fail to provide a “clear and reasonable  
6 warning” to those consumers and/or other individuals in the State of California who were or  
7 who could become exposed to the LISTED CHEMICAL through dermal contact and/or  
8 ingestion during the reasonably foreseeable use of the PRODUCTS.

9 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
10 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
11 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
12 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to  
13 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

14 38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
15 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
16 Safety Code Section 25249.7(b).

17 39. As a consequence of the above-described acts, California Health & Safety Code  
18 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
19 DEFENDANTS.

20 40. Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of  
21 them, as set forth hereinafter.

22 **PRAYER FOR RELIEF**

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

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

27 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),  
28 preliminarily and permanently enjoin DEFENDANTS from importing, manufacturing,

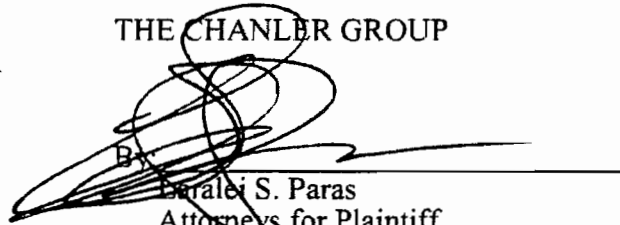
1 distributing, or offering the PRODUCTS for sale or use in California, without providing "clear  
2 and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with  
3 exposures the LISTED CHEMICAL;

- 4 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and  
5 4. That the Court grant such other and further relief as may be just and proper.

6 Dated: February 15, 2011

7 Respectfully submitted,

8 THE CHANLER GROUP

9   
10 Baralei S. Paras  
11 Attorneys for Plaintiff  
12 RUSSELL BRIMER