

ENDORSED
FILED
San Francisco County Superior Court

FEB 28 2011

CLERK OF THE COURT
BY: DEBORAH STEPPE
Deputy Clerk

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

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 PROVO CRAFT & NOVELTY, INC.; and
17 DOES 1 through 150, inclusive,

18 Defendants.

Case No. CGC-11-508609

**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 storage binders with
8 storage pages that defendants import, manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. Storage binders with storage pages commonly found to contain elevated levels of
11 lead that defendants import, manufacture, distribute, and/or offer for sale to consumers
12 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, 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 storage binders with
25 storage pages containing excessive levels of the LISTED CHEMICAL including, but not
26 limited to, the *Cuttlebug Storage Binder*, #37-1575 (#0 93573 41575 7). All such storage
27 binders with storage pages containing the LISTED CHEMICAL shall hereinafter be referred to
28 as the "PRODUCTS".

1 7. Defendants' failures to warn consumers and/or other individuals in the State of
2 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'
3 sales of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
4 of such conduct as well as civil penalties for each such violation.

5 8. As a result of defendants' violations of Proposition 65, plaintiff seeks preliminary
6 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users
7 of the PRODUCTS with the required warning regarding the health hazards of the LISTED
8 CHEMICAL in the PRODUCTS. (*Cal. Health & Safety Code § 25249.7(a).*)

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

11 **PARTIES**

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

16 11. Defendant PROVO CRAFT & NOVELTY, INC. ("PROVO CRAFT") is a person
17 doing business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendant PROVO CRAFT imports, manufactures, distributes, and/or offers the
19 PRODUCTS for sale or use in the State of California or implies by its conduct that it imports,
20 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
21 California.

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

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

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

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

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

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

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

15 20. PROVO CRAFT, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
17 referred to hereinafter as “DEFENDANTS”.

18 **VENUE AND JURISDICTION**

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

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

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

7 **FIRST CAUSE OF ACTION**

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

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

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

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

19 27. On October 29, 2010, a sixty-day notice of violation, together with the requisite
20 certificate of merit, was provided to PROVO CRAFT and various public enforcement agencies
21 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
22 the State of California were being exposed to lead resulting from the reasonably foreseeable
23 uses of the PRODUCTS, without the individual purchasers and users first having been provided
24 with a "clear and reasonable warning" regarding such toxic exposures.

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

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

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

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

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

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

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

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

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

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

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

13 39. As a consequence of the above-described acts, California Health & Safety Code
14 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
15 DEFENDANTS.

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

18 **PRAYER FOR RELIEF**

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

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

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

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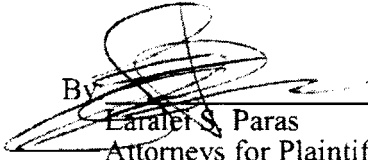
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: February 28, 2011

Respectfully submitted,

THE CHANLER GROUP

By 
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Attorneys for Plaintiff
RUSSELL BRIMER