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ENDORSED  
FILED  
ALAMEDA COUNTY

APR 28 2011

CLERK OF THE SUPERIOR COURT  
By E. Robins Deputy

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

11  
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 A.T. CROSS COMPANY; and DOES 1-150,  
16 inclusive,

17 Defendants.

Case No. 11-232

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(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 books/journals 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 books/journals 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 books/journals that  
10 defendants manufacture, distribute, and/or offer for sale to consumers and businesses throughout  
11 the State of 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 "clear and  
19 reasonable warning" requirements of Proposition 65 on February 27, 1988. (27 CCR § 27001  
20 (c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).)

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

22 7. Defendants manufacture, distribute, and/or sell books/journals containing  
23 excessive levels of the Listed Chemical including, but not limited to those offered with the *Cross*  
24 *Signature Journals, AC210-2S (#0 73228 09341 3)*. All such books/journals containing  
25 excessive levels of the Listed Chemical shall hereinafter be referred to as the "Products."

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

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 A.T. CROSS COMPANY ("CROSS") is a person doing business  
15 within the meaning of California Health & Safety Code § 25249.11.

16 13. Defendant CROSS 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.

1 17. Distributor Defendants distribute, exchange, transfer, process, and/or transport  
2 one or more of the Products to individuals, businesses, or retailers for sale or use in the State of  
3 California.

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

6 19. Retailer Defendants offer one or more of the Products for sale to individuals in the  
7 State of California.

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

13 21. Defendants CROSS, Manufacturer Defendants, Distributor Defendants, and  
14 Retailer Defendants shall, where appropriate, collectively be referred to hereinafter as  
15 “Defendants.”

16 **VENUE AND JURISDICTION**

17 22. Venue is proper in the Alameda County Superior Court pursuant to Code of Civil  
18 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because  
19 one or more instances of wrongful conduct occurred, and continues to occur, in the County of  
20 Alameda and/or because Defendants conducted, and continue to conduct, business in this County  
21 with respect to the Products.

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

26 24. The California Superior Court has jurisdiction over Defendants based on  
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
28 association that is a citizen of the State of California, has sufficient minimum contacts in the

1 State of California, or otherwise purposefully avails itself of the California market. Defendants'  
2 purposeful availment renders the exercise of personal jurisdiction by California courts consistent  
3 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 (*Ibid.*)

15 28. On October 29, 2010, plaintiff’s sixty-day notice of violation, together with the  
16 requisite certificate of merit, was provided to CROSS and various public enforcement agencies  
17 stating that as a result of CROSS’ sales of the Products, purchasers and users in the State of  
18 California were being exposed to the Listed Chemical resulting from the reasonably foreseeable  
19 uses of the Products, without the individual purchasers and users first having been provided with  
20 a “clear 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<sup>‡</sup> 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 offering of the Products for  
19 sale or use 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.

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

4 40. As a consequence of the above-described acts, California Health & Safety Code  
5 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

6 **PRAYER FOR RELIEF**

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

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

11 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
12 preliminarily and permanently enjoin Defendants, and each of them, from manufacturing,  
13 distributing, and/or offering the Products for sale or use in California, without providing "clear  
14 and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with  
15 exposures to the Listed Chemical;

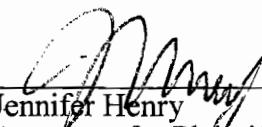
16 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

17 4. That the Court grants such other and further relief as may be just and proper.  
18

19 Respectfully Submitted,

20 Dated: April 27, 2011

THE CHANLER GROUP

21  
22 By:   
23 Jennifer Henry  
24 Attorneys for Plaintiff  
25 RUSSELL BRIMER  
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