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**ENDORSED
FILED**
San Francisco County Superior Court

MAY - 5 2011

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

CGC-11-510759

12 RUSSELL BRIMER,)
13 Plaintiff,)
14 v.)
15 NORDIC GROUP OF COMPANIES, LTD.,)
16 FLAMBEAU, INC.; and DOES 1-150,)
inclusive,)
17 Defendants.)
18

Case No. _____

**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
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 and Di-n-butyl phthalate (“DBP”), toxic chemicals
5 found in storage tote bags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to
7 warn California citizens about their exposure to lead and DBP, present in or on certain storage
8 tote bags that defendants manufacture, import, distribute, and/or offer for sale to consumers and
9 businesses throughout the State of California.

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

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

20 5. On December 2, 2005, California identified and listed DBP as a chemical known
21 to cause birth defects and other reproductive harm. DBP became subject to the warning
22 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
23 requirements of Proposition 65, beginning on December 2, 2006. (*27 CCR § 27001 (c); Cal.*
24 *Health & Safety Code §§ 25249.8 & 25249.10(b).* Lead and DBP shall be referred to hereinafter
25 as the “LISTED CHEMICALS.”

26 6. Defendants manufacture, import, distribute, and/or sell storage tote bags containing
27 excessive levels of the LISTED CHEMICALS including, but not limited to, *ArtBin Workstation*
28

1 Tote, #6909SA (#0 71617 00514 6). All such storage tote bags containing the LISTED
2 CHEMICALS shall hereinafter be collectively referred to as the "PRODUCTS."

3 7. Defendants' failure to warn consumers and/or other individuals in the State of
4 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
5 *seq.* about their exposure to the LISTED CHEMICALS in conjunction with Defendants'
6 distribution, importation, manufacture, and/or sale of the PRODUCTS is a violation of
7 Proposition 65 and subjects Defendants to enjoinder of such conduct as well as civil penalties
8 for each such violation.

9 8. For Defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
10 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
11 PRODUCTS with the required warning regarding the health hazards of THE LISTED
12 CHEMICALS. (*Cal. Health & Safety Code § 25249.7(a).*)

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

15 **PARTIES**

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

20 11. NORDIC GROUP COMPANIES, LTD. ("NORDIC GROUP") is a person doing
21 business within the meaning of California Health & Safety Code § 25249.11.

22 12. NORDIC GROUP manufactures, imports, distributes, and/or offers the
23 PRODUCTS for sale or use in the State of California or implies by its conduct that it
24 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
25 California.

26 13. FLAMBEAU, INC ("FLAMBEAU"). is a person doing business within the
27 meaning of California Health & Safety Code § 25249.11.
28

1 14. FLAMBEAU manufactures, imports, distributes, and/or offers the PRODUCTS for
2 sale or use in the State of California or implies by its conduct that it manufactures, imports,
3 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

4 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
5 doing business within the meaning of California Health & Safety Code § 25249.11.

6 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
7 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
8 engage in the process of research, testing, designing, assembling, fabricating, and/or
9 manufacturing, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or
10 use in the State of California.

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

13 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
15 the State of California.

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

18 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
19 State of California and, in some circumstances, may also be manufacturers and/or distributors.

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

25 22. NORDIC GROUP, FLAMBEAU, MANUFACTURER DEFENDANTS,
26 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
27 collectively be referred to hereinafter as “DEFENDANTS.”
28

1 **VENUE AND JURISDICTION**

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

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

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

17 **FIRST CAUSE OF ACTION**

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

19 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 25, inclusive.

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

24 28. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
25 and intentionally expose any individual to a chemical known to the state to cause cancer or
26 reproductive toxicity without first giving clear and reasonable warning to such individual...”

27 (*Id.*)

1 29. On or about October 15, 2010, a sixty-day notice of violation (the “Lead Notice”),
2 together with the requisite Certificate of Merit, was provided to NORDIC GROUP,
3 FLAMBEAU, and various public enforcement agencies stating that as a result of
4 DEFENDANTS’ manufacture and/or distribution of the PRODUCTS, purchasers and users in
5 the State of California were being exposed to lead resulting from the reasonably foreseeable uses
6 of the PRODUCTS, without the individual purchasers and users first having been provided with
7 a “clear and reasonable warning” regarding such toxic exposures.

8 30. On or about November 12, 2010, a sixty-day notice of violation (the “DBP
9 Notice”), together with the requisite Certificate of Merit, was provided to NORDIC GROUP,
10 FLAMBEAU, and various public enforcement agencies stating that as a result of
11 DEFENDANTS’ manufacture and/or distribution of the PRODUCTS, purchasers and users in
12 the State of California were being exposed to DBP resulting from the reasonably foreseeable
13 uses of the PRODUCTS, without the individual purchasers and users first having been provided
14 with a “clear and reasonable warning” regarding such toxic exposures.

15 31. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
16 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
17 25249.6 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of the
18 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
19 continued to occur beyond NORDIC GROUP and FLAMBEAU’s receipt of the Lead Notice and
20 the DBP Notice. Plaintiff further alleges and believes that such violations will continue to occur
21 into the future.

22 32. After receipt of the claims asserted in the Lead Notice and the DBP Notice, the
23 appropriate public enforcement agencies have failed to commence and diligently prosecute a
24 cause of action against DEFENDANTS under Proposition 65.

25 33. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
26 use in California by DEFENDANTS contained the LISTED CHEMICALS above the allowable
27 state limits.

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1 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
2 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
3 the LISTED CHEMICALS.

4 35. The LISTED CHEMICALS was present in or on the PRODUCTS in such a way as
5 to expose individuals to the LISTED CHEMICALS through dermal contact and ingestion during
6 the reasonably foreseeable use of the PRODUCTS.

7 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
8 continues to cause consumer and workplace exposures to the LISTED CHEMICALS, as such
9 exposure is defined by 27 CCR § 25602(b).

10 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal contact
12 and ingestion.

13 38. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
14 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
15 accidental participation in the manufacture, importation, distribution, and/or offer for sale or use
16 of PRODUCTS to individuals in the State of California.

17 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers and/or other individuals in the State of California who were or who could become
19 exposed to the LISTED CHEMICALS through dermal contact and ingestion during the
20 reasonably foreseeable use of the PRODUCTS.

21 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
22 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal
23 contact and ingestion, resulting from the reasonably foreseeable use of the PRODUCTS, sold by
24 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
25 irreparable harm, for which harm they have no plain, speedy, or adequate remedy at law.

