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**FILED**

**MAR 25 2011**

**KIM TURNER**  
Court Executive Officer  
**MARIN COUNTY SUPERIOR COURT**  
By: C. Lucchesi, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF MARIN  
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 CONSOLIDATED SHOE COMPANY,  
INCORPORATED and DOES 1-150,

17 Defendants.

Case No. CIV 1101582

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1  
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 certain of defendants'  
5 footwear and shoe products manufactured, distributed and/or otherwise sold by defendants in  
6 California.

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

12 3. On February 27, 1987, the State of California identified and listed lead as a  
13 chemical known to cause birth defects and other reproductive harm. Lead became subject to the  
14 warning requirement one year later and was therefore subject to the "clear and reasonable  
15 warning" requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001*  
16 *(c); Cal. Health & Safety Code § 25249.8.*) Lead shall hereinafter be referred to as the  
17 "LISTED CHEMICAL."

18 4. Significant levels of the LISTED CHEMICAL have been discovered in or on  
19 footwear that defendants manufacture, distribute, and/or offer for sale to consumers throughout  
20 the State of California including, but not limited to, the *Apostrophe Glory Orange, Item # 13375*  
21 *(#7 19424 08331 4)*. All such footwear containing the LISTED CHEMICAL shall hereinafter  
22 be referred to as the "PRODUCTS."

23 5. Defendants' failure to warn consumers and/or other individuals in the State of  
24 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'  
25 sale of the PRODUCTS is a violation of Proposition 65.

26 6. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
27 permanent injunctive relief to compel defendants to provide purchasers or users of the  
28



1 PRODUCTS with the required warning regarding the health hazards of the LISTED  
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

3 7. Plaintiff also seeks civil penalties against defendants for their violations of  
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 8. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is  
7 dedicated to protecting the health of California citizens through the elimination or reduction of  
8 toxic exposures from consumer products, and brings this action in the public interest pursuant to  
9 California Health & Safety Code Section 25249.7.

10 9. Defendant CONSOLIDATED SHOE COMPANY, INCORPORATED  
11 (“CONSOLIDATED SHOE”) is a person doing business within the meaning of California  
12 Health & Safety Code Section 25249.11.

13 10. Defendant CONSOLIDATED SHOE manufactures, distributes, and/or offers the  
14 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
15 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
16 California.

17 11. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
18 persons doing business within the meaning of California Health & Safety Code Section  
19 25249.11.

20 12. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
21 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
22 engage in the process of research, testing, designing, assembling, fabricating, and/or  
23 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

1 15. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing  
2 business within the meaning of California Health & Safety Code Section 25249.11.

3 16. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
4 State of California.

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

10 18. CONSOLIDATED SHOE, MANUFACTURER DEFENDANTS,  
11 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,  
12 collectively be referred to hereinafter as “DEFENDANTS”.

### 13 VENUE AND JURISDICTION

14 19. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
15 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
16 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
17 County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business  
18 in this County with respect to the PRODUCTS.

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

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



1 FIRST CAUSE OF ACTION

2 (Violation of Proposition 65 - Against All Defendants)

3 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 21, inclusive.

5 23. The citizens of the State of California have expressly stated in the Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5,  
7 *et seq.* (Proposition 65) that they must be informed “about exposures to chemicals that cause  
8 cancer, birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

9 24. On November 12, 2010, a sixty-day notice of violation (“60-Day Notice”),  
10 together with the requisite Certificate of Merit, was provided to CONSOLIDATED SHOE and  
11 various public enforcement agencies stating that as a result of the DEFENDANTS’ sales of the  
12 PRODUCTS, purchasers and users in the State of California are being exposed to lead resulting  
13 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
14 users first having been provided with a “clear and reasonable warning” regarding such toxic  
15 exposures.

16 25. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
17 the PRODUCTS for sale or use in violation of California Health & Safety Code Section  
18 25249.6 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for  
19 sale or use in violation of California Health & Safety Code Section 25249.6 has continued to  
20 occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further alleges  
21 and believes that such violations will continue to occur into the future.

22 26. After receipt of the claims asserted in the 60-Day Notice, the appropriate public  
23 enforcement agencies have failed to commence and diligently prosecute a cause of action  
24 against DEFENDANTS under Proposition 65.

25 27. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
26 California by DEFENDANTS, contain the LISTED CHEMICAL.

27 28. DEFENDANTS knew or should have known that the PRODUCTS contained the  
28 LISTED CHEMICAL.

1 29. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
2 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
3 25602(b), through dermal contact and/or ingestion during the reasonably foreseeable use of the  
4 PRODUCTS.

5 30. DEFENDANTS knew or should have known that the reasonably foreseeable use  
6 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
7 and/or ingestion.

8 31. DEFENDANTS' participation in the manufacture, distribution and/or offer for  
9 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-  
10 accidental.

11 32. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
12 consumers and/or other individuals in the State of California who were or who could become  
13 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

14 33. Contrary to the express policy and statutory prohibition of Proposition 65,  
15 individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion  
16 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS  
17 without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable  
18 harm, for which harm they have no other plain, speedy or adequate remedy at law.

19 34. As a consequence of the above-described acts, DEFENDANTS are liable for a  
20 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to  
21 California Health & Safety Code Section 25249.7(b).

22 35. As a consequence of the above-described acts, California Health & Safety Code  
23 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
24 DEFENDANTS.

25 **PRAYER FOR RELIEF**

26 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
27 follows:  
28



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

4 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),  
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
6 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
7 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to  
8 the LISTED CHEMICAL;

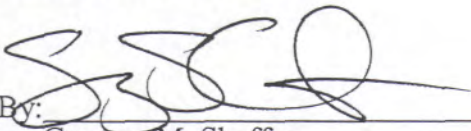
9 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

10 4. That the Court grant such other and further relief as may be just and proper.

11  
12 Dated: March 25, 2011

Respectfully submitted,

THE CHANLER GROUP

14  
15 By:   
16 Gregory M. Sheffer  
17 Attorneys for Plaintiff  
18 RUSSELL BRIMER