

ENDORSED
FILED
ALAMEDA COUNTY

MAY 13 2011

CLERK OF THE SUPERIOR COURT
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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 TOFASCO OF AMERICA, INC.,
MACSPORTS, INC.; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. AG 11575589

**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 Lead Compounds ("Lead"), a toxic chemical
5 found in folding chairs 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, present in or on certain folding chairs that
8 defendants manufacture, import, distribute, and/or offer for sale to consumers and businesses
9 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
16 to 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.*) Lead shall be referred to hereinafter as the "LISTED
20 CHEMICAL."

21 5. Defendants manufacture, import, distribute, and/or sell folding chairs containing
22 Lead including, but not limited to, *Collegiate Licensed Product Season Ticket Bazaar Folding*
23 *Chair, BA-09 (#7 14129 30903 5).*

24 6. All such folding chairs containing Lead, shall hereinafter be collectively referred to
25 as the "PRODUCTS."

26 7. Defendants' failure to warn consumers and/or other individuals in the State of
27 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
28 *seq.* about their exposure to Lead in conjunction with Defendants' distribution, importation,

1 manufacture, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
2 Defendants to enjoinder of such conduct as well as civil penalties for each such violation.

3 8. For Defendants' violation 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 Lead. (*Cal. Health &*
6 *Safety Code § 25249.7(a).*)

7 9. 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 10. 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 and commercial products, and brings this action in the public interest
13 pursuant to California Health & Safety Code § 25249.7.

14 11. TOFASCO OF AMERICA, INC. ("TOFASCO") is a person doing business within
15 the meaning of California Health & Safety Code § 25249.11.

16 12. TOFASCO manufactures, imports, distributes, and/or offers the PRODUCTS for
17 sale or use in the State of California or implies by its conduct that it manufactures, imports,
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

19 13. MACSPORTS, INC. ("MACSPORTS") is a person doing business within the
20 meaning of California Health & Safety Code § 25249.11.

21 14. MACSPORTS manufactures, imports, distributes, and/or offers the PRODUCTS
22 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
23 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

26 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
28 engage in the process of research, testing, designing, assembling, fabricating, and/or

1 manufacturing, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or
2 use in the State of California.

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

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

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

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

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

17 22. TOFASCO, MACSPORTS, MANUFACTURER DEFENDANTS,
18 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
19 collectively be referred to hereinafter as “DEFENDANTS.”

20 VENUE AND JURISDICTION

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

26 24. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
28

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

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

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

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

16 28. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
17 and intentionally expose any individual to a chemical known to the state to cause cancer or
18 reproductive toxicity without first giving clear and reasonable warning to such individual...”
19 (*Id.*)

20 29. On or about February 1, 2011, a sixty-day notice of violation (the “Notice”),
21 together with the requisite Certificate of Merit, was provided to TOFASCO, MACSPORTS, and
22 various public enforcement agencies stating that as a result of DEFENDANTS manufacture
23 and/or distribution of the PRODUCTS, purchasers and users in the State of California were
24 being exposed to Lead resulting from the reasonably foreseeable uses of the PRODUCTS,
25 without the individual purchasers and users first having been provided with a “clear and
26 reasonable warning” regarding such toxic exposures.

27 30. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
28 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §

1 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
2 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
3 continued to occur beyond TOFASCO's and MACSPORTS' receipt of the Notice. Plaintiff
4 further alleges and believes that such violations will continue to occur into the future.

5 31. After receipt of the claims asserted in the Notice, the appropriate public
6 enforcement agencies have failed to commence and diligently prosecute a cause of action against
7 DEFENDANTS under Proposition 65.

8 32. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
9 use in California by DEFENDANTS contained Lead above the allowable state limits.

10 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
11 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
12 Lead.

13 34. Lead was present in or on the PRODUCTS in such a way as to expose individuals
14 to Lead through dermal contact and ingestion during the reasonably foreseeable use of the
15 PRODUCTS.

16 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
17 continues to cause consumer and workplace exposures to Lead, as such exposure is defined by
18 27 CCR § 25602(b).

19 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
20 the PRODUCTS would expose individuals to Lead through dermal contact and ingestion.

21 37. DEFENDANTS intended that such exposures to Lead from the reasonably
22 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
23 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
24 individuals in the State of California.

25 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and/or other individuals in the State of California who were or who could become
27 exposed to Lead through dermal contact and ingestion during the reasonably foreseeable use of
28 the PRODUCTS.

