

SAN FRANCISCO COUNTY  
SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
Plaintiff,  
v.

STAPLES, INC.; and DOES 1-150, inclusive,  
Defendants.

Case No. **CGC-11-510604**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

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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 laptop 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 the lead present in or on laptop bags that  
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
9 California.

10          3.     High levels of lead are commonly found in and on the laptop bags that defendants  
11 manufacture, distribute, and/or offer for sale to consumers throughout 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”), “[n]o person in the  
14 course of doing business shall knowingly and intentionally expose any individual to a chemical  
15 known to the state to cause cancer or reproductive toxicity without first giving clear and  
16 reasonable 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 “clear and  
19 reasonable warning” requirements of Proposition 65 one year later on February 27, 1988. (Cal.  
20 Code Regs., tit. 27, § 27001, subd. (c); Cal. Health & Safety Code §§ 25249.8. & 25249.10(c).)  
21 Lead shall be referred to hereinafter as the “LISTED CHEMICAL.”

22          6.     Defendants manufacture, distribute, and/or offer for sale laptop bags containing  
23 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Dickies Laptop*  
24 *Bag, #724639 (#6 19374 16998 7)*. All such laptop bags containing the LISTED CHEMICAL  
25 shall hereinafter be referred to as the “PRODUCTS.”

26          7.     Defendants’ failure to warn consumers and/or other individuals in the State of  
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’  
28 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder

1 of such conduct as well as civil penalties for each such violation.

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

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

8 **PARTIES**

9 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is  
10 dedicated to protecting the health of California citizens through the elimination or reduction of  
11 toxic exposures from consumer products; he brings this action in the public interest pursuant to  
12 California Health & Safety Code § 25249.7(d).

13 11. Defendant STAPLES, INC. ("STAPLES") is a person in the course of doing  
14 business within the meaning of California Health & Safety Code §§ 25249.6 & 25249.11(c).

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

18 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are persons in  
19 the course of doing business within the meaning of California Health & Safety Code §§ 25249.6  
20 & 25249.11(c).

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

25 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are persons in the  
26 course of doing business within the meaning of California Health & Safety Code §§ 25249.6 &  
27 25249.11(c).



1 association that either is a citizen of the State of California, has sufficient minimum contacts in  
2 the State of California, or otherwise purposefully avails itself of the California market.  
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

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

13 26. Proposition 65 states, "[n]o person in the course of doing business shall  
14 knowingly and intentionally expose any individual to a chemical known to the state to cause  
15 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
16 individual...." (*Ibid.*)

17 27. On or about February 1, 2011, Brimer served a sixty-day notice of violation,  
18 together with the requisite certificate of merit, on, STAPLES and various public enforcement  
19 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers  
20 and users in the State of California were being exposed to the LISTED CHEMICAL without the  
21 individual purchasers and users first having been provided with a "clear and reasonable  
22 warning" regarding such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
24 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
25 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
26 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
27 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
28 believes that such violations will continue to occur into the future.

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

4           30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
6 limits.

7           31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
8 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
9 LISTED CHEMICAL.

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

13          33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
14 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposure is  
15 defined by Title 27, California Code of Regulations (“CCR”), section 25602(b).

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

19          35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
21 accidental participation in the manufacture, distribution, and/or offering for sale or use, the  
22 PRODUCTS to individuals in the State of California.

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

27          37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
2 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to  
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 39. As a consequence of the above-described acts, California Health & Safety Code  
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

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

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

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

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

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

22  
23 Dated: April 28, 2011

Respectfully Submitted,  
THE CHANLER GROUP

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26 By: 

Brian C. Johnson  
Attorneys for Plaintiff  
RUSSELL BRIMER