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SAN FRANCISCO COUNTY
SUPERIOR COURT

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

13 RUSSELL BRIMER,
14 Plaintiff,

15 vs.

16 VANDOR LLC and DOES 1-150,
17 Defendants.

Case No. **CGC-12-523859**

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

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

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

17 4. Significant levels of the LISTED CHEMICAL have been discovered in or on
18 decorated glassware that defendants manufacture, distribute, and/or offer for sale to
19 consumers throughout the State of California including, but not limited to, DC Comics
20 Collector Glass Set, Item #74379, VAN 74379SG-0910 (#7 33966 05125 9). All such glassware
21 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

25 6. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
26 permanent injunctive relief to compel defendants to provide purchasers or users of the
27 PRODUCTS with the required warning regarding the health hazards of the LISTED
28 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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, *et*
7 *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 October 28, 2011, a sixty-day notice of violation ("60-Day Notice"), supported
10 by the requisite Certificate of Merit, was served upon VANDOR and various public
11 enforcement agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS,
12 purchasers and users in the State of California are being exposed to lead resulting from the
13 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
14 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
17 of 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 VANDOR's receipt of plaintiff's 60-Day Notice. Plaintiff further alleges and
21 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
4 the 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.

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PRAYER FOR RELIEF

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

1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED CHEMICAL;
3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: August 20 2012

Respectfully submitted,
THE CHANLER GROUP

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
RUSSELL BRIMER