

1 Christopher M. Martin, State Bar No. 186021
2 Josh Voorhees, State Bar No. 241436
3 Troy C. Bailey, State Bar No. 277424
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
7 RUSSELL BRIMER

ENDORSED
FILED
ALAMEDA COUNTY
AUG 01 2012
CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

16 PARAMOUNT APPAREL
17 INTERNATIONAL, INC.; and DOES 1-150,
18 inclusive,

18 Defendants.

Case No. RG12641740

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

21
22
23
24
25
26
27
28
BY FAX

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, a toxic chemical found in hats sold in California.

5 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
6 warn California citizens about reproductive toxicity associated with their exposure to lead
7 present in or on certain hats that defendants manufacture, import, distribute, and/or offer for sale
8 to consumers throughout the state of California.

9 3. High levels of lead are commonly found in and on the hats that defendants
10 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

11 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
13 course of doing business shall knowingly and intentionally expose any individual to a chemical
14 known to the state to cause cancer or reproductive toxicity without first giving clear and
15 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

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

21 6. Defendants manufacture, import, distribute, and/or offer for sale hats containing
22 excessive levels of lead including, but not limited to, *Bass Pro Shops Khaki Safari Hat*,
23 #040077139326-1245797. All such hats containing lead shall hereinafter be referred to as the
24 “PRODUCTS.”

25 7. Defendants’ failure to warn consumers and/or other individuals in the state of
26 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to lead and its potential to cause birth defects and other reproductive
28 harm in conjunction with defendants’ distribution, importation, manufacturing, and/or sale of

1 the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
2 conduct as well as civil penalties for each such violation.

3 8. For defendants' violations 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 by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

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

14 11. Defendant PARAMOUNT APPAREL INTERNATIONAL, INC.
15 ("PARAMOUNT") is a person in the course of doing business within the meaning of California
16 Health & Safety Code § 25249.11.

17 12. Defendant PARAMOUNT, manufactures, imports, distributes, and/or offers the
18 PRODUCTS for sale or use in the state of California, or implies by its conduct that it
19 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of
20 California.

21 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
22 persons in the course of doing business within the meaning of California Health & Safety Code
23 § 25249.11.

24 14. MANUFACTURER DEFENDANTS engage in the process of researching,
25 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
26 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
27 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

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

3 23. 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,
5 or association that is a citizen of the state of California, has sufficient minimum contacts in the
6 state of California, or otherwise purposefully avails itself of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

13 25. The citizens of the state of California have expressly stated in the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*
15 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
16 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

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

21 27. On or about January 19, 2012, a sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to PARAMOUNT and various public enforcement
23 agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers
24 and users in the state of California were being exposed to lead resulting from the reasonably
25 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
26 been provided with a “clear and reasonable warning” regarding such toxic exposures.

27
28

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

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

10 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
11 California by DEFENDANTS contained lead in an amount above the allowable state limits.

12 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
13 distributed, and/or offered for sale or use in California contained lead.

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

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

20 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
21 the PRODUCTS would expose individuals to lead through dermal contact and/or ingestion.

22 35. DEFENDANTS intended that such exposures to lead from the reasonably
23 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
24 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
25 individuals in the state of California.

26 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and/or other individuals in the state of California who were, or who could become
28

1 exposed to lead through dermal contact and/or ingestion during the reasonably foreseeable use
2 of the PRODUCTS.

3 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
4 directly by California voters, individuals exposed to lead through dermal contact and/or
5 ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
6 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
7 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

11 39. As a consequence of the above-described acts, California Health & Safety Code
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

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

19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
22 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposure to lead;

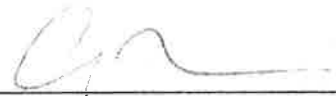
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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: July 26, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher M. Martin
Attorney for Plaintiff
RUSSELL BRIMER