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FILED  
ALAMEDA COUNTY

JUN 14 2012

CLERK OF THE SUPERIOR COURT

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 DMI SPORTS, INC.; and DOES 1-150,  
18 inclusive,

19 Defendants.

Case No. RG12634674

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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 table tennis sets sold in  
5 California.

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

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

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

18 5. On February 27, 1987, California identified and listed lead as a chemical known  
19 to cause birth defects and other reproductive harm. Lead became subject to the "clear and  
20 reasonable warning" requirements of Proposition 65, beginning on February 27, 1988. (Cal.  
21 Code Regs., tit. 27, § 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)

22 6. Defendants manufacture, distribute, and/or offer for sale table tennis sets  
23 containing lead including, but not limited to, the *Prince 2 Player Racket Set, Item #: 2PLAYSET*  
24 *(#7 19981 70590 2)*. All such table tennis sets containing lead shall hereinafter be referred to as  
25 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 section  
28 6300 *et seq.*, about their exposure to lead and its potential to cause birth defects and other

1 reproductive harm in conjunction with Defendants' distribution, importation, manufacturing,  
2 and/or sale of the Products is a violation of Proposition 65 and subjects Defendants to  
3 enjoinder of such conduct as well as civil penalties for each such violation.

4 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
5 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
6 Products with the required warning regarding the health hazards of lead. (Health & Safety  
7 Code, § 25249.7, subd. (a).)

8 9. Plaintiff also seeks civil penalties against defendants for their violations of  
9 Proposition 65, as provided by Health & Safety Code section 25249.7, subdivision (b).

10 **PARTIES**

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

15 11. Defendant DMI Sports, Inc. ("DMI") is a person in the course of doing business  
16 within the meaning of Health & Safety Code section 25249.11.

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

20 13. Defendants DOES 1-50 ("Manufacturer Defendants") are each persons in the  
21 course of doing business within the meaning of Health & Safety Code section 25249.11.

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

26 15. Defendants DOES 51-100 ("Distributor Defendants") are each persons in the  
27 course of doing business within the meaning of Health & Safety Code section 25249.11.  
28



1 purposeful availment renders the exercise of personal jurisdiction by California courts  
2 consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

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

7 25. The citizens of the state of California have stated expressly in the Safe Drinking  
8 Water and Toxic Enforcement Act of 1986 that they must be informed “about exposures to  
9 chemicals that cause cancer, birth defects and other reproductive harm.” (Health & Saf. Code,  
10 § 25249.6.)

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

15 27. On or about January 19, 2012, a sixty-day notice of violation, together with the  
16 requisite certificate of merit, was provided to DMI and various public enforcement agencies  
17 stating that, as a result of the Defendants’ sales of the Products, purchasers and users in the state  
18 of California were exposed to lead resulting from the reasonably foreseeable use of the  
19 Products, without the individual purchasers and users first having received a “clear and  
20 reasonable warning” regarding such toxic exposures.

21 28. Defendants have engaged in the manufacture, distribution, and/or offering of the  
22 Products for sale or use in violation of Health & Safety Code section 25249.6, and Defendants’  
23 manufacture, distribution, and/or offering of the Products for sale or use in violation of Health  
24 & Safety Code section 25249.6 has continued to occur beyond Defendants’ receipt of Plaintiff’s  
25 sixty-day notice of violation. Plaintiff further alleges and believes that such violations will  
26 continue to occur into the future.

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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 lead in an amount above the allowable state limits.

6           31. Defendants knew or should have known that the Products manufactured,  
7 distributed, and/or offered for sale or use in California contained lead.

8           32. Lead was present in or on the Products in such a way as to expose individuals to  
9 lead through dermal contact and/or ingestion during the reasonably foreseeable use of the  
10 Products.

11           33. The normal and reasonably foreseeable use of the Products has caused, and  
12 continues to cause, consumer exposures to lead, as such exposure is defined by California Code  
13 of Regulations title 27, section 25602, subdivision (b).

14           34. Defendants had knowledge that the normal and reasonably foreseeable use of the  
15 Products would expose individuals to lead through dermal contact and/or ingestion.

16           35. Defendants intended that such exposures to lead from the reasonably foreseeable  
17 use of the Products would occur by their deliberate, non-accidental participation in the  
18 manufacture, distribution, and/or offering of the Products for sale or use to individuals in the  
19 state of California.

20           36. Defendants failed to provide a “clear and reasonable warning” to those consumers  
21 and/or other individuals in the state of California who were, or who could become, exposed to  
22 lead through dermal contact and/or ingestion during the reasonably foreseeable use of the  
23 Products.

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

