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FILED

JUL 31 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: T. Fraguero, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 vs.

15 FRANKLIN FINANCIAL MANAGEMENT
16 INC. and DOES 1-150,

17 Defendants.

Case No. CIV 1203486 -

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

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

1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of Di(2ethylhexyl)phthalate ("DEHP") and Lead, toxic chemicals found in and on certain kitchen apron and hand tool sets manufactured, distributed and/or otherwise sold by defendants in California.

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

3. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.)

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

5. DEHP and Lead shall hereinafter be collectively referred to as "LISTED CHEMICAL."

6. Significant levels of DEHP have been discovered in or on kitchen aprons and kitchen hand tools that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of California including, but not limited to, Update International Vinyl Bib Apron (Item# APV2641 HD, Product #: 7 55576 02419 5) and Update International Oyster Opener (Item# EGU-9, Product #: 7 55576 02279 5). Significant levels of Lead have been

1 discovered in or on kitchen hand tools that defendants manufacture, distribute, and/or offer
2 for sale to consumers throughout the State of California including, but not limited to, Update
3 International Oyster Opener (Item# EGU-9, Product #: 7 55576 02279 5).

4 7. All such kitchen aprons and kitchen hand tools containing the LISTED
5 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

13 10. Plaintiff also seeks civil penalties against defendants for their violations of
14 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

15 PARTIES

16 11. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated
17 to protecting the health of California citizens through the elimination or reduction of toxic
18 exposures from consumer products, and brings this action in the public interest pursuant to
19 California Health & Safety Code Section 25249.7.

20 12. Defendant FRANKLIN FINANCIAL MANAGEMENT INC. (hereafter
21 "FRANKLIN") is a person doing business within the meaning of California Health & Safety
22 Code Section 25249.11.

23 13. Defendant FRANKLIN manufactures, distributes, and/or offers the PRODUCTS
24 for sale or use in the State of California or implies by its conduct that it manufactures,
25 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

26 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code Section 25249.11.
28

1 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
2 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
3 engage in the process of research, testing, designing, assembling, fabricating, and/or
4 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

5 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
6 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

10 18. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
11 business within the meaning of California Health & Safety Code Section 25249.11.

12 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
13 of California.

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

20 21. FRANKLIN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
21 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
22 to hereinafter as "DEFENDANTS".

23 VENUE AND JURISDICTION

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

23. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 24, inclusive.

26. The citizens of the State of California have expressly stated in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5, *et seq.* (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth defects and other reproductive harm." (*Cal. Health & Safety Code* § 25249.6.)

27. On January 31, 2012, a sixty-day notice of violation ("60-Day Notice"), supported by the requisite Certificate of Merit, was served upon FRANKLIN and various public enforcement agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California are being exposed to lead resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for

37. As a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California Health & Safety Code Section 25249.7(b).

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

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: July 31, 2012

Respectfully submitted,

THE CHANLER GROUP

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
RUSSELL BRIMER