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ENDORSED
FILED
ALAMEDA COUNTY

SEP 13 2012

CLERK OF THE SUPERIOR COURT
By R.C. Hughes,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
ALAMEDA COUNTY
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,

v.

CYGNETT USA INC.; SWAN
COMMUNICATIONS USA INC.; FRY'S
ELECTRONICS, INC.; and DOES 1-150,
inclusive,
Defendants.

Case No. RG12647755

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 and di(2-ethylhexyl)phthalate ("DEHP"), toxic
5 chemicals found in laptop bags and zipper pulls on laptop bags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens and other individuals about the risk of exposure to excessive amounts
8 of lead present in and on the laptop bags defendants manufacture, distribute, sell and/or offer for
9 sale or use to consumers throughout the state of California.

10 3. By this Complaint, plaintiff also seeks to remedy defendants' continuing failure to
11 warn California citizens and other individuals about the risk of exposure to excessive levels of
12 DEHP present in and/or on the zipper pulls of certain laptop bags defendants manufacture,
13 distribute, sell and/or offer for sale or use to consumers throughout the state of California.

14 4. High levels of lead are commonly found on the exterior coverings of laptop bags,
15 and high levels of DEHP are commonly found on the zipper pulls on laptop bags that
16 defendants manufacture, distribute, sell and/or offer for sale to consumers throughout the state
17 of California.

18 5. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
19 California Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in
20 the course of doing business shall knowingly and intentionally expose any individual to a
21 chemical known to the state to cause cancer or reproductive toxicity without first giving clear
22 and reasonable warning to such individual ..." (Cal. Health & Safety Code § 25249.6.)

23 6. On February 27, 1987, the state of California identified and listed lead as a
24 chemical known to cause birth defects and other reproductive harm. Lead became subject to the
25 "clear and reasonable warning" requirements of Proposition 65 one year later on February 27,
26 1988. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health & Safety Code §§ 25249.8 and
27 25249.10(b).)

1 7. On October 24, 2003, California identified and listed DEHP pursuant to
2 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
3 became subject to the "clear and reasonable warning" requirements of the Act one year later on
4 October 24, 2004. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health & Safety Code §§ 25249.8
5 and 25249.10(b).) Lead and DEHP are referred to collectively hereinafter as the "LISTED
6 CHEMICALS."

7 8. Defendants manufacture, distribute, and/or sell laptop bags with covers that
8 contain excessive levels of lead, and zipper pulls on laptop bags that contain excessive levels of
9 DEHP, including, but not limited to, the external cover material and zipper pull components of
10 the *Cygnett BubbleBag 10.2" Laptop, CY-B-B100, #080909 (#8 79144 00402 7)*. All such
11 laptop bags containing lead and zipper pulls on laptop bags containing DEHP are referred to
12 collectively hereinafter as "PRODUCTS."

13 9. Defendants' failure to warn consumers and/or other individuals in the state of
14 California about their exposure to the LISTED CHEMICALS in conjunction with defendants'
15 sale of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
16 of such conduct as well as civil penalties for each violation. (Cal. Health & Safety Code
17 § 25249.7(a) and (b)(1).)

18 10. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
19 permanent injunctive relief to compel defendants to provide purchasers or users of the
20 PRODUCTS with the required warning regarding the risks of exposure to the LISTED
21 CHEMICALS from the PRODUCTS. (Cal. Health & Safety Code § 25249.7(a).)

22 11. Plaintiff also seeks civil penalties against defendants for their violations of
23 Proposition 65, as provided by California Health and Safety Code § 25249.7(b).

24 **PARTIES**

25 12. Plaintiff RUSSELL BRIMER is a citizen of the state of California who is
26 dedicated to protecting the health of California citizens through the elimination or reduction of
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1 toxic exposures from hazardous chemicals found in consumer products, and he brings this
2 action in the public interest pursuant to California Health and Safety Code section 25249.7(d).

3 13. Defendant CYGNETT USA INC. ("CYGNETT") is a person in the course of
4 doing business within the meaning of California Health and Safety Code section 25249.11.

5 14. CYGNETT manufactures, distributes, and/or offers the PRODUCTS for sale or
6 use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
7 offers the PRODUCTS for sale or use in the state of California.

8 15. Defendant SWAN COMMUNICATIONS USA INC. ("SWAN") is a person in the
9 course of doing business within the meaning of California Health and Safety Code section
10 25249.11.

11 16. SWAN manufactures, distributes, and or offers the PRODUCTS for sale or use in
12 the state of California, or implies by its conduct that it manufactures, distributes, and/or offers
13 the PRODUCTS for sale or use in the state of California.

14 17. Defendant FRY'S ELECTRONICS, INC. ("FRY'S") is a person in the course of
15 doing business within the meaning of California Health and Safety Code section 25249.11.

16 18. FRY'S manufactures, distributes, and or offers the PRODUCTS for sale or use in
17 the state of California, or implies by its conduct that it manufactures, distributes, and/or offers
18 the PRODUCTS for sale or use in the state of California.

19 19. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
20 persons in the course of doing business within the meaning of California Health and Safety
21 Code section 25249.11.

22 20. MANUFACTURER DEFENDANTS engage in the process of researching,
23 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
24 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
25 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.
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1 21. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
2 in the course of doing business within the meaning of California Health and Safety Code
3 section 25249.11.

4 22. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
5 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
6 in the state of California.

7 23. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
8 the course of doing business within the meaning of California Health and Safety Code
9 section 25249.11.

10 24. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 state of California.

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

17 26. CYGNETT, SWAN, FRY’S, MANUFACTURER DEFENDANTS,
18 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
19 collectively be referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

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

26 28. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, section 10, which grants the superior courts “original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

3 29. 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 or
5 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 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 29, inclusive.

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

17 32. 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 ...” (*Id.*)

21 33. On or about April 5, 2012, plaintiff’s sixty-day notice of violation, together with
22 the requisite certificate of merit, was provided to CYGNETT and certain requisite public
23 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
24 containing the LISTED CHEMICALS, purchasers and users in the state of California are being
25 exposed to the LISTED CHEMICALS resulting from their reasonably foreseeable use of the
26 PRODUCTS, without the individual purchasers and users first having received the “clear and
27 reasonable warning” regarding such toxic exposures required by Proposition 65.

1 34. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 the PRODUCTS for sale or use in violation of California Health and Safety Code section
3 25249.6, and such violations have continued to occur beyond DEFENDANTS' receipt of
4 plaintiff's sixty-day notice of violation. Plaintiff further alleges that DEFENDANTS' violations
5 are ongoing and continuous in nature, such that they will occur in the future.

6 35. After receiving the claims asserted in plaintiff's sixty-day notice of violation, the
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a
8 cause of action against DEFENDANTS under Proposition 65.

9 36. The PRODUCTS DEFENDANTS manufacture, distribute, and/or offer for sale or
10 use in California contain each of the LISTED CHEMICALS in an amount that exceeds the
11 allowable state limits, such that the PRODUCTS require "clear and reasonable" warnings under
12 Proposition 65.

13 37. DEFENDANTS have knowledge that the PRODUCTS they manufacture,
14 distribute, and/or offer for sale or use in California contain the LISTED CHEMICALS.

15 38. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
16 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
17 use.

18 39. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
19 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
20 defined by title 27, California Code of Regulations, section 25602(b).

21 40. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
22 of the PRODUCTS exposes individuals to the LISTED CHEMICALS through dermal contact
23 and/or ingestion.

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

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1 42. DEFENDANTS failed to provide a “clear and reasonable warning” to those
2 consumers and/or other individuals in the state of California who were or who could become
3 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
4 reasonably foreseeable use of the PRODUCTS.

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

10 44. As a consequence of the above-described acts, DEFENDANTS are liable for a
11 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health and
12 Safety Code section 25249.7(b).

13 45. As a consequence of the above-described acts, California Health and Safety Code
14 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
15 DEFENDANTS.

16 **PRAYER FOR RELIEF**

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

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

21 2. That the Court, pursuant to California Health and Safety Code section 25249.7(a),
22 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
23 offering the PRODUCTS for sale or use in California without first providing a “clear and
24 reasonable warning” as defined by title 27, California Code of Regulations, section 25601, as to
25 the risks of exposure, and the harms associated with exposures to the LISTED CHEMICALS;

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

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

Dated: September 13, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
RUSSELL BRIMER