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SUPERIOR COURT OF THE STATE OF CALIFORNIA
SANTA CLARA COUNTY
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,
v.
BAM BROKERAGE, INC.; and DOES 1-150,
inclusive,
Defendants.

Case No. 112CV228961

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

ENDORSED
FILED

2012 JUL 23 3:53

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: _____
Dputy Clerk

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 travel bags for folding
5 chairs sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to lead present in and on the travel bags for
8 folding chairs manufactured, distributed, and/or offered for sale or use to consumers throughout
9 the state of California.

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

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

18 5. On February 27, 1987, the state of California identified and listed lead as a
19 chemical known to cause birth defects and other reproductive harm. Lead became subject to the
20 “clear and reasonable warning” requirements of Proposition 65 one year later on February 27,
21 1988. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
22 25249.10(b).) Lead is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and/or sell travel bags for folding chairs that
24 contain excessive levels of lead, including, but not limited to, the bag offered in connection with
25 the *On The Edge Marketing Kingpin Folding Chair, Part No. 810170 (#8 11799 01671 0)*. All
26 such travel bags for folding chairs containing lead are referred to collectively hereinafter as
27 “PRODUCTS.”
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1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 in the course of doing business within the meaning of California Health & Safety Code
5 § 25249.11.

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

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
10 the course of doing business within the meaning of California Health & Safety Code
11 § 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 state of California.

14 19. 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 names pursuant to
16 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
17 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
18 herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. BAM, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
20 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
21 “DEFENDANTS.”

22 VENUE AND JURISDICTION

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

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

5 23. The California Superior Court has jurisdiction over DEFENDANTS based on
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
7 association that is a citizen of the state of California, has sufficient minimum contacts in the
8 state of California, or otherwise purposefully avails itself of the California market.
9 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
10 California courts consistent with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**

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

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

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

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

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

3 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
5 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
6 notice of violation. Plaintiff further alleges that DEFENDANTS’ violations are ongoing and
7 continuous in nature and, as such, will continue to occur in the future.

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

11 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
13 allowable state limits, such that they require a “clear and reasonable” Proposition 65 warning.

14 31. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufactured, distributed, and/or offered for sale or use in California contain the LISTED
16 CHEMICAL.

17 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
18 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

19 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
21 defined by Cal. Code Regs., tit. 27, § 25602(b).

22 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
23 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
24 and/or ingestion.

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

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

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

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

15 39. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

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

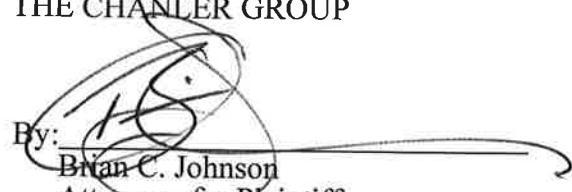
23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
25 offering the PRODUCTS for sale or use in California without first providing a “clear and
26 reasonable warning” as defined by Cal. Code Regs., tit. 27, § 25601, as to the harms associated
27 with exposure the LISTED CHEMICAL;
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- 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 17, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
RUSSELL BRIMER