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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 29 2012  
CLERK OF THE SUPERIOR COURT  
By Carla Baker Deputy

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

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 SPORTS WAREHOUSE; and DOES 1-150,  
15 inclusive,

16 Defendants.  
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19 12657875  
Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Cal. 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 lead tape sold in  
5 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 or on certain lead tape that  
8 defendants manufactured, imported, distributed, and/or offered for sale to consumers throughout  
9 the State of California.

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

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

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

21 6. Defendants manufacture, import, distribute, and/or offer for sale lead tape  
22 containing lead in levels that require a warning under Proposition 65 including, but not limited  
23 to, the *Lead Tape Reel (1/4 inch)*. All such lead tape containing lead shall hereinafter be referred  
24 to as the "PRODUCTS."

25 7. Defendants' failure to warn consumers and/or other individuals in the State of  
26 California about their exposure to lead in conjunction with defendants' distribution, importation,  
27 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects  
28 defendants to enjoinder of such conduct as well as civil penalties for each such violation.

1 (Cal. Health & Safety Code §§ 25249.7(a) & (b)(1).)

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

6 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
7 penalties against defendants for their violations of Proposition 65.

8 **PARTIES**

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

13 11. Defendant SPORTS WAREHOUSE is a person in the course of doing business  
14 within the meaning of Health and Safety Code section 25249.11.

15 12. SPORTS WAREHOUSE manufactures, imports, distributes, and/or offers the  
16 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
17 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of  
18 California.

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

22 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
23 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
24 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
25 California.

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

28 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or

1 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
2 in the State of California.

3 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
4 the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
6 State of California.

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

12 20. SPORTS WAREHOUSE, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
13 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
14 referred to as “DEFENDANTS.”

### 15 VENUE AND JURISDICTION

16 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
17 Procedure sections 393, 395, & 395.5, because this Court is a court of competent jurisdiction,  
18 because one or more instances of wrongful conduct occurred, and continue to occur, in the  
19 County of Alameda, and/or because DEFENDANTS conducted, and continue to conduct,  
20 business in this County with respect to the PRODUCTS.

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

25 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
26 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,  
27 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
28 State of California, or otherwise purposefully avails itself of the California market.

1 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
2 California courts 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. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
8 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be  
9 informed about exposures to chemicals that cause cancer, birth defects and other reproductive  
10 harm.”

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....” (Cal. Health & Safety Code, § 25249.6.)

15 27. On May 24, 2012, plaintiff’s sixty-day notice of violation, together with the  
16 requisite certificate of merit, was provided to SPORTS WAREHOUSE and certain public  
17 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
18 containing lead, purchasers and users in the State of California were being exposed to lead  
19 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual  
20 purchasers and users first having been provided with a “clear and reasonable warning”  
21 regarding such toxic exposures, as required by Proposition 65.

22 28. DEFENDANTS have engaged in the manufacture, importation, distribution,  
23 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code  
24 section 25249.6, and such violations have continued to occur beyond DEFENDANTS’ receipt  
25 of plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing  
26 and continuous in nature, and will continue to occur in the future.

27 29. After receiving the claims asserted in the sixty-day notice of violation, the  
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a

1 cause of action against DEFENDANTS under Proposition 65.

2 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or  
3 use in California by DEFENDANTS contained lead in amounts above the allowable state limits,  
4 such that they require a “clear and reasonable” warning under Proposition 65.

5 31. DEFENDANTS knew or should have known that the PRODUCTS they  
6 manufacture, import, distribute, and/or offer for sale or use in California contained lead.

7 32. Lead is present in or on the PRODUCTS in such a way as to expose individuals to  
8 lead through dermal contact and/or ingestion during the reasonably foreseeable use.

9 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
10 continue to cause, consumer and workplace exposures to lead, as such exposures are defined by  
11 California Code of Regulations title 27, section 25602(b).

12 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
13 of the PRODUCTS expose individuals to lead through dermal contact and/or ingestion.

14 35. DEFENDANTS intended that such exposures to lead from the reasonably  
15 foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental  
16 participation in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
17 to individuals in the State of California.

18 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
19 consumers and/or other individuals in the State of California who were or who would become  
20 exposed to lead through dermal contact and/or ingestion during the reasonably foreseeable uses  
21 of the PRODUCTS.

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