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**ENDORSED
FILED
ALAMEDA COUNTY**
SEP 21 2012
CLERK OF THE SUPERIOR COURT
By Loretta Butlin, Deputy

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

RUSSELL BRIMER,

Plaintiff,

v.

ATLANTIC HOSIERY & APPAREL, INC.;
and DOES 1-150, inclusive,

Defendants.

RG12648952
Case No. _____

**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 luggage tags and wristlets sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risks of exposure to lead and DEHP present in and on
8 luggage tags, and DEHP present in and on wristlets manufactured, distributed, and/or offered
9 for sale or use by defendants to consumers throughout the state of California.

10 3. High levels of lead and DEHP are commonly found in and on the luggage tags,
11 and high levels of DEHP are commonly found in and on the wristlets that defendants
12 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and 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 & Safety Code § 25249.6.

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

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

3 7. Defendants manufacture, distribute, and sell luggage tags and wristlets containing
4 the DEHP and/or lead as follows:

5 a. Defendants manufacture, distribute, and/or sell luggage tags that contain
6 excessive levels of lead and DEHP, including, but not limited to, those offered in
7 connection with the *Cute Product Luggage Tag, #08-009009 (#7 09673 00016 3)*.

8 b. Defendants manufacture, distribute, and sell wristlets that contain
9 excessive levels of DEHP, including, but not limited to, those offered in connection with
10 the *Moda Wristlet (#7 09673 00780 3)*.

11 8. All such luggage tags containing lead and DEHP, described above in paragraph
12 7(a), and all such wristlets containing DEHP, described above in paragraph 7(b), shall
13 hereinafter be referred to collectively as the "PRODUCTS."

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

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

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

25 **PARTIES**

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

3 13. Defendant ATLANTIC HOSIERY & APPAREL, INC. (“ATLANTIC
4 HOSIERY”) is a person in the course of doing business within the meaning of Health and
5 Safety Code section 25249.11.

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

9 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
10 persons in the course of doing business within the meaning of Health and Safety Code section
11 25249.11.

12 16. MANUFACTURER DEFENDANTS engage in the process of researching,
13 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
14 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
15 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.

16 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
17 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

18 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
19 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
20 in the state of California.

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

23 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
24 state of California.

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

3 22. ATLANTIC HOSIERY, MANUFACTURER DEFENDANTS, DISTRIBUTOR
4 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
5 referred to as "DEFENDANTS."

6 **VENUE AND JURISDICTION**

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

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

16 25. The California Superior Court has jurisdiction over DEFENDANTS based on
17 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
18 association that is a citizen of the state of California, has sufficient minimum contacts in the
19 state of California, or otherwise purposefully avails itself of the California market.
20 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
21 California courts consistent with traditional notions of fair play and substantial justice.

22 **FIRST CAUSE OF ACTION**

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

24 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
25 Paragraphs 1 through 25, inclusive.

26 27. The citizens of the State of California have expressly stated in the Safe Drinking
27 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* that
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1 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
2 reproductive harm.” Health & Safety Code § 25249.6.

3 28. Proposition 65 states, “[n]o person in the course of doing business shall
4 knowingly and intentionally expose any individual to a chemical known to the state to cause
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such
6 individual ...” *Id.*

7 29. On or about May 24, 2012, plaintiff’s sixty-day notice of violation, together with
8 the requisite certificate of merit, was provided to ATLANTIC HOSIERY and certain requisite
9 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
10 PRODUCTS containing the LISTED CHEMICALS, purchasers and users in the state of
11 California were being exposed to the LISTED CHEMICALS resulting from the reasonably
12 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
13 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
14 required by Proposition 65.

15 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
16 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
17 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
18 notice of violation. Plaintiff further alleges that DEFENDANTS’ violations are ongoing and
19 continuous in nature and, as such, will continue to occur in the future.

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

23 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
24 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the
25 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
26 65.

1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufactured, distributed, and/or offered for sale or use in California contain the LISTED
3 CHEMICALS.

4 34. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
5 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable
6 use.

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

10 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS exposes individuals to the LISTED CHEMICALS through dermal contact
12 and/or ingestion.

13 37. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
14 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
15 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
16 sale or use to individuals in the state of California.

17 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers and other individuals in the state of California who were or who could become
19 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
20 reasonably foreseeable use of the PRODUCTS.

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