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**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 18 2013

CLERK OF THE SUPERIOR COURT
By Barbara LaMotte Deputy

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

RUSSELL BRIMER,

Plaintiff,

v.

NEATFREAK GROUP INC.; BED BATH &
BEYOND, INC.; and DOES 1-150, inclusive,

Defendants.

Case No. RG13663979

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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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 lead, a toxic chemical found in vinyl/PVC tote bag handles sold in California.

2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn California citizens about the risk of exposure to lead present in and on the vinyl/PVC tote bag handles manufactured, distributed, and offered for sale or use to consumers throughout the State of California.

3. Detectable levels of lead are commonly found in and on the vinyl/PVC tote bag handles that defendants manufacture, distribute, and offer for sale to consumers throughout the State of California.

4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o 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” Health & Safety Code § 25249.6.

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

6. Defendants manufacture, distribute, import, sell, and offer for sale without a warning in California, vinyl/PVC tote bag handles containing lead including, but not limited to, the *Everfresh Single Fashion Laundry Tote, A-05645-004X1-EEEE* (#0 61648 90488 4). All such vinyl/PVC tote bag handles containing lead are referred to collectively hereinafter as “PRODUCTS.”

1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
2 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
3 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
4 PRODUCTS.

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

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

15 **FIRST CAUSE OF ACTION**

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

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

19 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
20 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
21 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
22 harm.”

23 28. Proposition 65 states, “[n]o person in the course of doing business shall
24 knowingly and intentionally expose any individual to a chemical known to the state to cause
25 cancer or reproductive toxicity without first giving clear and reasonable warning to such
26 individual” Health & Safety Code § 25249.6.

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1 29. On September 21, 2012, plaintiff's supplemental sixty-day notice of violation,
2 together with the requisite certificate of merit, was provided to NEATFREAK, BB&B, and
3 certain public enforcement agencies stating that, as a result of DEFENDANTS' sales of the
4 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of
5 California were being exposed to the LISTED CHEMICAL resulting from their reasonably
6 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
7 been provided with a "clear and reasonable warning" regarding such toxic exposures, as
8 required by Proposition 65.

9 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
10 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
11 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of
12 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and
13 continuous in nature, and will continue to occur in the future.

14 31. After receiving plaintiff's sixty-day notice of violation, the appropriate public
15 enforcement agencies have failed to commence and diligently prosecute a cause of action
16 against DEFENDANTS under Proposition 65.

17 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
18 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
19 a "clear and reasonable" warning under Proposition 65.

20 33. DEFENDANTS knew or should have known that the PRODUCTS they
21 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
22 CHEMICAL.

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

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1 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
3 defined by title 27 of the California Code of Regulations, section 25602(b).

4 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
6 and/or ingestion.

7 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
8 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
9 accidental participation in the manufacture, importation, distribution, sale, and offering of the
10 PRODUCTS for sale or use to individuals in the State of California.

11 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and other individuals in the State of California who were or who would become
13 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
14 reasonably foreseeable uses of the PRODUCTS.

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

20 40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
21 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
22 for each violation.

23 41. As a consequence of the above-described acts, Health and Safety Code
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.

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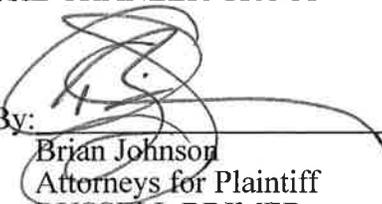
PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and 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 first providing a “clear and reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures 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: January 17, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian Johnson
Attorneys for Plaintiff
RUSSELL BRIMER