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ENDORSED
FILED
ALAMEDA COUNTY
APR 30 2013
CLERK OF THE SUPERIOR COURT
By S. IYAMU Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 JAKKS PACIFIC, INC.; KIDS ONLY, LLC;
19 KIDS ONLY, INC.; TOYS "R" US, INC.; and
20 DOES 1-150, inclusive,

21 Defendants.

22 Case No. RG 13 6 7 7 6 1 9

23 **COMPLAINT FOR CIVIL PENALTIES
24 AND INJUNCTIVE RELIEF**

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

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BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiff RUSSELL BRIMER in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the presence of Tris(1,3-dichloro-2-propyl)phosphate (“TDCPP”), a toxic chemical
5 found in padded upholstered furniture sold in California. TDCPP is a toxic chemical that is used to
6 treat polyurethane foam, which is used as padding or cushioning in a variety of products.

7 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failures to warn
8 California citizens about the risks of exposures to TDCPP present in and on padded upholstered
9 children’s chairs manufactured, distributed, sold, and offered for sale or use to consumers
10 throughout the State of California.

11 3. Detectable levels of TDCPP are commonly found in and on padded upholstered
12 children’s chairs that Defendants manufacture, distribute, sell, and offer for sale to consumers
13 throughout the State of California. Individuals in California, including infants and children, are
14 exposed to TDCPP when they inhale TDCPP released from padded upholstered children’s chairs,
15 and also when TDCPP from padded upholstered children’s chairs accumulates in ambient particles
16 that are subsequently touched by such individuals and brought into contact with the mouth.

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

22 5. TDCPP has been used in consumer products as an additive flame retardant since the
23 1960s. In the late 1970s, based on findings that exposure to TDCPP could have mutagenic effects,
24 the United States Consumer Product Safety Commission banned the use of TDCPP in children’s
25 pajamas.

26 6. Pursuant to Proposition 65, on October 28, 2011, California identified and listed
27 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable
28 warning” requirements of the Act one year later on October 28, 2012. (Cal. Code Regs., Title 27,

1 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).) TDCPP is hereinafter referred to as
2 the “LISTED CHEMICAL.”

3 7. Defendants manufacture, distribute, import, sell, and/or offer for sale padded
4 upholstered children’s chairs containing TDCPP without a warning including, but not limited to,
5 *Thomas & Friends Table & Chair Set, Item #31025 (#0 39897 31025 1)*. All such padded
6 upholstered children’s chairs containing TDCPP, are hereinafter collectively referred to as the
7 “PRODUCTS.”

8 8. Although Defendants expose infants, children, and other people to TDCPP in the
9 PRODUCTS, Defendants provide no warnings about the carcinogenic hazards associated with these
10 TDCPP exposures. Defendants’ failures to warn consumers and other individuals in the State of
11 California about their exposures to the LISTED CHEMICAL in conjunction with Defendants’ sales
12 of the PRODUCTS, is a violation of Proposition 65, and subjects Defendants to enjoinder of such
13 conduct as well as civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

14 9. As a result of Defendants’ violations of Proposition 65, Plaintiff seeks preliminary
15 and permanent injunctive relief to compel Defendants to provide purchasers and users of the
16 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
17 (Health & Safety Code § 25249.7(a).)

18 10. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties
19 against Defendants for their violations of Proposition 65.

20 **PARTIES**

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

25 12. Defendant JAKKS PACIFIC, INC. is a person in the course of doing business within
26 the meaning of Health and Safety Code § 25249.11.

27 13. Defendant JAKKS PACIFIC, INC. manufactures, imports, distributes, sells, and/or
28 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State
2 of California.

3 14. Defendant KIDS ONLY, LLC is a person in the course of doing business within the
4 meaning of Health and Safety Code § 25249.11.

5 15. Defendant KIDS ONLY, LLC imports, distributes, sells, and/or offers the
6 PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,
7 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

8 16. Defendant KIDS ONLY, INC. is a person in the course of doing business within the
9 meaning of Health and Safety Code § 25249.11.

10 17. Defendant KIDS ONLY, INC. imports, distributes, sells, and/or offers the
11 PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,
12 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

13 18. Defendant TOYS “R” US, INC. is a person in the course of doing business within the
14 meaning of Health and Safety Code § 25249.11.

15 19. Defendant TOYS “R” US, INC. imports, distributes, sells, and/or offers the
16 PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports,
17 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

18 20. Defendants DOES 1-150 are each persons in the course of doing business within the
19 meaning of Health and Safety Code § 25249.11(b), who manufacture, distribute, sell, and/or offer
20 the PRODUCTS for sale in the State of California. At this time, the true names and capacities of
21 defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who, therefore, sues said
22 defendants by their fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff is
23 informed and believes, and on that basis alleges, that each of the fictitiously named defendants is
24 responsible for the acts and occurrences alleged herein. When ascertained, their true names and
25 capacities shall be reflected in an amended complaint.

26 21. Defendant JAKKS PACIFIC, INC., KIDS ONLY, LLC, KIDS ONLY, INC., TOYS
27 “R” US, INC., and Defendants DOES 1-150 are collectively referred to herein as “Defendants.”

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1 **VENUE AND JURISDICTION**

2 22. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
3 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
4 Plaintiff seeks civil penalties against Defendants, because one or more instances of wrongful
5 conduct occurred, and continue to occur, in Alameda County, and/or because Defendants
6 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

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

11 24. The California Superior Court has jurisdiction over Defendants based on Plaintiff’s
12 information and good faith belief that each Defendant is a person, firm, corporation or association
13 that is a citizen of the State of California, has sufficient minimum contacts in the State of California,
14 and/or otherwise purposefully avails itself of the California market. Defendants’ purposeful
15 availment of California as a marketplace for the PRODUCTS renders the exercise of personal
16 jurisdiction by California courts over Defendants consistent with traditional notions of fair play and
17 substantial justice.

18 **FIRST CAUSE OF ACTION**

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

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

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

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

1 28. On February 15, 2013, Plaintiff's sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to JAKKS PACIFIC, INC., KIDS ONLY, LLC, KIDS
3 ONLY, INC., TOYS "R" US, INC., and certain public enforcement agencies stating that, as a result
4 of Defendants' sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users
5 in the State of California were being exposed to the LISTED CHEMICAL resulting from their
6 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
7 having been provided with a "clear and reasonable warning" regarding such toxic exposures, as
8 required by Proposition 65.

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

14 30. After receiving Plaintiff's sixty-day notice of violation, the appropriate public
15 enforcement agencies have not commenced and are not diligently prosecuted a cause of action
16 against Defendants under Proposition 65.

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

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

22 33. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
23 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
24 inhalation during reasonably foreseeable uses of the PRODUCTS.

25 34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
26 continue to cause, consumer exposures to the LISTED CHEMICAL as such exposures are defined
27 by Title 27 of the California Code of Regulations, section 25602(b).

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as defined by Title 27 of the California Code of Regulations, § 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: April 29, 2013

THE CHANLER GROUP

By: 
Laralei S. Paras
Attorneys for Plaintiff
RUSSELL BRIMER