

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 16 2014

**CLERK OF THE SUPERIOR COURT
By Louis Staley, Jr.**

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 RITE AID CORPORATION; and DOES 1-150,
15 inclusive,

16 Defendants.

Case No. **RG14733162**

**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 Brimer in the
3 public interest of the citizens of the State of California (hereinafter "California") to enforce the
4 People's right to be informed of the presence of lead, a toxic chemical found in water sprayers with
5 metal nozzles sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
7 California citizens about the risk of exposure to lead present in and on water sprayers with metal
8 nozzles manufactured, distributed, and offered for sale or use to consumers throughout California.

9 3. Detectable levels of lead are commonly found in and on water sprayers with metal
10 nozzles that defendants manufacture, sell, and distribute for sale to consumers throughout
11 California.

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

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

22 6. Significant levels of the LISTED CHEMICAL have been discovered in or on the water
23 sprayers with metal nozzles that are manufactured, imported, distributed, and/or sold by defendants.

24 7. One example of the water sprayers with metal nozzles containing the LISTED
25 CHEMICAL that defendants manufacture, import, distribute and/or sell is the *Rite Aid Home &*
26 *Garden Water Sprayer, Item 9018648-MMXIII, UPC #6 55759 32465 7.*

27 8. All such water sprayers with metal nozzles identified in paragraphs 6 and 7 above, shall
28 hereinafter be collectively referred to as the "Products."

1 9. Defendants’ failure to warn consumers and other individuals in California about their
2 exposure to the LISTED CHEMICAL in conjunction with defendants’ sales of the PRODUCTS is a
3 violation of Proposition 65, and subjects defendants to enjoinderment of such conduct as well as civil
4 penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

5 10. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and permanent
6 injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the
7 required warning regarding the health hazards of the LISTED CHEMICAL. Health & Safety Code
8 § 25249.7(a).

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

11 **PARTIES**

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

16 13. Defendant RITE AID CORPORATION (“RITE AID”) is a person in the course of
17 doing business within the meaning of Health and Safety Code § 25249.11.

18 14. RITE AID manufactures, imports, sells, and/or distributes the PRODUCTS for sale or
19 use in California, or implies by its conduct that it manufactures, imports, sells, and/or distributes the
20 PRODUCTS for sale or use in California.

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

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

26 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
27 the course of doing business within the meaning of Health and Safety Code § 25249.11.

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

4 19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the
5 course of doing business within the meaning of Health and Safety Code § 25249.11.

6 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in
7 California.

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

13 22. RITE AID, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
14 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
15 "DEFENDANTS."

VENUE AND JURISDICTION

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

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

26 25. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
28 association that is a citizen of California, has sufficient minimum contacts in California, and/or

1 otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful
2 availment renders the exercise of personal jurisdiction by California courts consistent with
3 traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

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

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

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

15 29. On or about December 30, 2013, plaintiff's sixty-day notice of violation, together
16 with the requisite certificate of merit, copies of which are attached collectively hereto as Exhibit A
17 and fully incorporated herein by this reference, was provided to RITE AID and requisite public
18 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS
19 containing the LISTED CHEMICAL, purchasers and users in California were being exposed to the
20 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without
21 the individual purchasers and users first having been provided with a "clear and reasonable
22 warning" regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

22 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and other individuals in California who were or who would become exposed to the
24 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable
25 uses of the PRODUCTS.

26 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by

1 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,
2 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

8 **PRAYER FOR RELIEF**

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

10 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil
11 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

12 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
13 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
14 for sale or use in California without first providing a “clear and reasonable warning” as defined by
15 title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with
16 exposures the LISTED CHEMICAL;


17 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

18 4. That the Court grant such other and further relief as may be just and proper.

19 Dated: July 16, 2014

20 Respectfully Submitted,

21 THE CHANLER GROUP

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23 By: 
24 Laralei S. Paras
25 Attorneys for Plaintiff
26 RUSSELL BRIMER
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