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SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER, Plaintiff, v. MADE FOR RETAIL, INCORPORATED; TARGET CORPORATION and DOES 1-150, inclusive, Defendants.	Case No. CIV 1501549 **COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF** (Health & Safety Code § 25249.6 et seq.)

NATURE OF THE ACTION

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 about exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical that is found in and on vinyl/PVC I.D. pouches sold by defendants in California.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn California citizens about the risks of exposures to DEHP present in the vinyl/PVC I.D. pouches, distributed, and offered for sale or use to consumers throughout the State of California.

3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC I.D. pouches that defendants import, manufacture, distribute, ship, sell and/or offer for sale to consumers throughout 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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a chemical that is known to cause birth defects and other reproductive harm. DEHP became subject to the "clear and reasonable warning" requirements of the act one year later on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP 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 I.D. pouches containing the LISTED CHEMICAL, including, but not limited to, the *ID pouch, #234 24 0922, UPC #8 47302 03308 0.* All such, vinyl/PVC I.D. pouches containing the LISTED CHEMICAL are referred to collectively hereinafter as the "PRODUCTS."

7. Defendants' failure to warn consumers and other individuals in California of the harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL are violations of Proposition 65, and subject defendants to enjoinment of such conduct, as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil penalties against defendants, and each of them, for each violation of Proposition 65.

PARTIES

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

11. Defendant MADE FOR RETAIL, INCORPORATED ("MADE FOR RETAIL") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

12. MADE FOR RETAIL manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

13. Defendant TARGET CORPORATION ("TARGET") is a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

14. TARGET , imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

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

22. MADE FOR RETAIL, TARGET, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as "DEFENDANTS."

VENUE AND JURISDICTION

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

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

28. Proposition 65 states, "[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.

29. On February 26, 2014, plaintiff Russell Brimer's sixty-day notice of violation, together with the requisite certificate of merit, was provided to TARGET, and the requisite public enforcement agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS containing the LISTED CHEMICAL, consumers, and other individuals in the State of California are being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first having received a "clear and reasonable warning" regarding the health hazards associated with such toxic exposures, as required by Proposition 65.

30. On February 27, 2015, plaintiff RUSSELL BRIMER served a supplemental sixty-day notice of violation of Proposition 65, together with the requisite certificate of merit, on TARGET, MADE FOR RETAIL, and the requisite public enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the LISTED CHEMICAL, consumers, and other individuals in the State of California are being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first having received a "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

32. After receiving plaintiff's sixty-day notices of violation, no public enforcement agencies has commenced and is diligently prosecute a cause of action against DEFENDANTS

under Proposition 65 for the violations alleged in either of the 60-day notices.

33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the reasonably foreseeable uses of these products result in exposures that require a "clear and reasonable" warning under Proposition 65.

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

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

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

37. DEFENDANTS have knowledge that the normal and reasonably foreseeable use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or ingestion.

38. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or use to individuals in the State of California.

39. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and other individuals in California not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to the LISTED CHEMICAL.

40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, consumers, and other individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable

uses of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

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, and each of them, 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 to 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 28, 2015

Respectfully Submitted,
THE CHANLER GROUP

By _____
Brian C. Johnson
Attorneys for Plaintiff
RUSSELL BRIMER