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ENDORSED

2014 AUG -6 P 3: 20

David H. Verasquez, Clerk of the Superior Court
County of Santa Clara, California
1067
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,
15
16 Plaintiff,

17 v.

18 GRAND STAR INDUSTRIAL LIMITED,
19 TARGET CORPORATION; and DOES 1-150,
20 inclusive,

21 Defendants.

114CV269021

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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 that is found in the vinyl/PVC components of manicure cases sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risks of exposures to DEHP present in vinyl/PVC manicure
8 cases manufactured, distributed, and offered for sale or use to consumers throughout the State of
9 California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC
11 components of manicure cases that defendants import, manufacture, distribute, ship, sell and/or
12 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 October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without a
24 warning in California, manicure cases with vinyl/PVC components containing the LISTED
25 CHEMICAL, including, but not limited to, the *Travel Manicure Set, #044 15 0704, UPC #4*
26 *90441 50704 4*. All such manicure cases with vinyl/PVC components containing the LISTED
27 CHEMICAL are referred to collectively as the “PRODUCTS.”
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1 7. Defendants' failure to warn workers, consumers and other individuals in
2 California of the harms associated with exposures to the LISTED CHEMICAL in conjunction
3 with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL are violations
4 of Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil
5 penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

12 PARTIES

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

17 11. Defendant TARGET CORPORATION is a person in the course of doing business
18 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

19 12. TARGET CORPORATION manufactures, imports, distributes, sells, and/or
20 offers the PRODUCTS for sale or use in the State of California, or it implies by its conduct that
21 it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
22 State of California.

23 13. Defendant GRAND STAR INDUSTRIAL LIMITED ("GRAND STAR") is a
24 person in the course of doing business within the meaning of Health and Safety Code sections
25 25249.6 and 25249.11.

26 14. GRAND STAR manufactures, imports, distributes, sells, and/or offers the
27 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
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1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
4 person in the course of doing business within the meaning of Health and Safety Code sections
5 25249.6 and 25249.11.

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

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

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

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

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

21 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
22 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
24 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
25 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 22. TARGET CORPORATION, GRAND STAR, MANUFACTURER
2 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are
3 hereinafter collectively referred to as "DEFENDANTS."

4 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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” Health & Safety Code § 25249.6.

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

15 30. On May 21, 2013, plaintiff Russell Brimer served a Supplemental sixty-day
16 notice of violation, together with the requisite certificate of merit, on TARGET
17 CORPORATION, GRAND STAR and the requisite public enforcement agencies stating that, as
18 a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL,
19 workers, consumers, and other individuals in the State of California were being exposed to the
20 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
21 without the individual purchasers and users first having received a “clear and reasonable
22 warning” regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

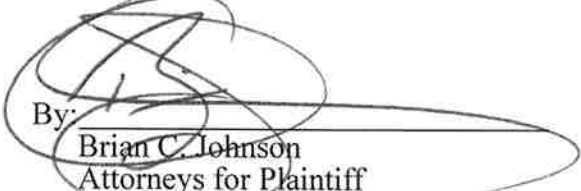
23 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 workers, consumers and other individuals in California not covered by California's
25 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,
26 exposed to the LISTED CHEMICAL.

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

Dated: August 5, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
RUSSELL BRIMER