

1 Brian C. Johnson, State Bar No. 235965
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 RUSSELL BRIMER

ENDORSED
2015 JUN 16 P 2:10
T. NGO
Notar Public, Clerk of the Superior Court
County of Santa Clara, California

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

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 PACIFIC WORLD CORPORATION; and
18 DOES 1-150, inclusive,

19 Defendants.

Case No. **115CV281924**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

ENDORSED

2015 JUN 15 2:10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 eyelash curler grips that are sold 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 and on the eyelash curler grips manufactured, 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 components of eyelash curler grips that defendants import, manufacture, distribute, ship, sell and/or 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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a chemical that is known to cause birth defects or 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 warning in California, eyelash curler grips containing the LISTED CHEMICAL, including, but not limited to, the *Cover Girl Eye Care Kit (Eyelash Curler)*, #09538, UPC #0 73750 09538 1. All such eyelash curler grips containing the LISTED CHEMICAL are referred to collectively hereinafter as the "PRODUCTS."

1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
5 and 25249.11.

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

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

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 20. PWC, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
20 and RETAILER DEFENDANTS are hereinafter collectively referred to as “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

22 21. Venue is proper in the County of Santa Clara, pursuant to Code of Civil
23 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
24 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
25 wrongful conduct occurred, and continue to occur, in this county, and/or because
26 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
27 respect to the PRODUCTS.
28

1 without the individual purchasers and users first having received a “clear and reasonable
2 warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
6 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
7 continuous in nature, and will continue to occur in the future.

8 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
9 enforcement agencies have failed to commence and diligently prosecute a cause of action
10 against DEFENDANTS under Proposition 65.

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

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

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

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

23 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
24 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
25 and/or ingestion.

26 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
27 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
28

1 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
2 use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in California not covered by California’s Occupational Safety
5 Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to the LISTED
6 CHEMICAL.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, consumers, and other individuals exposed to the LISTED
9 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
10 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”
11 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
12 adequate remedy at law.

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

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

19 **PRAYER FOR RELIEF**

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

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

24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
26 offering the PRODUCTS for sale or use in California without first providing a “clear and
27
28

1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
2 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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

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

5 Dated: June 15, 2015

Respectfully Submitted,

THE CHANLER GROUP

By: 

Brian C. Johnson
Attorneys for Plaintiff
RUSSELL BRIMER

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28