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ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 13 2016

CLERK OF THE COURT
BY: ROSSALY L. LA VEGA
Deputy Clerk

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
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16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 COMPTREE INC.; FRY'S ELECTRONICS,
20 INC.; and DOES 1-150, inclusive,

21 Defendants.
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Case No. CGC 16-551474

**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
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical that is found
5 in vinyl/PVC desk organizers that are sold in California.

6 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle Defendants’ products, about the risks of
9 exposure to DEHP, present in and on the vinyl/PVC desk organizers manufactured, distributed,
10 and offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle Defendants’ products, are referred to hereinafter as “CONSUMERS”.

13 3. Detectable levels of DEHP are commonly found in and on components of
14 vinyl/PVC desk organizers that Defendants import, manufacture, distribute, ship, sell and/or
15 offer for sale to CONSUMERS throughout the State of California.

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

21 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
22 chemical that is known to cause birth defects or other reproductive harm. DEHP became
23 subject to the “clear and reasonable warning” requirements of the act one year later on October
24 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
25 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without
27 warning in California, vinyl/PVC desk organizers containing the LISTED CHEMICAL,
28 including, but not limited to, *Merax Desk Organizer, #901-026, UPC #8 34784 01618 2*. All

1 such vinyl/PVC desk organizers containing the LISTED CHEMICAL are referred to
2 collectively hereinafter as the "PRODUCTS."

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

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

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

14 **PARTIES**

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

19 11. Defendant COMPTREE INC. ("COMPTREE") is a person in the course of doing
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

25 13. Defendant FRY'S ELECTRONICS, INC. ("FRY'S") is a person in the course of
26 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

1 14. FRY'S manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
2 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
5 person in the course of doing business within the meaning of Health and Safety Code sections
6 25249.6 and 25249.11.

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

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

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

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

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

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

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

5 29. On January 29, 2016, Plaintiff’s sixty-day notice of violation, together with the
6 requisite certificate of merit, was provided to DEFENDANTS and certain public enforcement
7 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
8 LISTED CHEMICAL, consumers, and other individuals in the State of California were being
9 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
10 PRODUCTS, without the individual purchasers and users first having received a “clear and
11 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

12 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
13 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
14 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
15 Plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
16 continuous in nature, and will continue to occur in the future.

17 31. After receiving Plaintiff’s sixty-day notice of violation, the appropriate public
18 enforcement agencies have failed to commence and diligently prosecute a cause of action
19 against DEFENDANTS under Proposition 65.

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

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

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

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

4 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
6 and/or ingestion.

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

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

15 39. Contrary to the express policy and statutory prohibitions of Proposition 65
16 enacted directly by California voters, consumers, and other individuals exposed to the LISTED
17 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
18 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”
19 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
20 adequate remedy at law.

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

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

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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 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 12, 2016

Respectfully Submitted,

THE CHANLER GROUP

By: _____
O’Neil G. Dennis
Attorneys for Plaintiff
RUSSELL BRIMER