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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 13 2016

CLERK OF THE COURT
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Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

12
13 RUSSELL BRIMER,
14 Plaintiff,
15 v.

16 SPECTRUM BRANDS, INC.; and DOES 1 –
17 150, inclusive,
18 Defendants.

) Case No. CGC-16-552530
)
) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
)
) (Health & Safety Code § 25249.5 *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 of the health hazards caused by exposures to di(2-ethylhexyl)phthalate
5 ("DEHP"), a toxic chemical found in and on the vinyl/PVC handles of lanterns sold by
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn individuals not covered by California's Occupational Safety Health Act, Labor Code §
9 6300 *et seq.*, who purchase, use, or handle defendants' products about the risks of exposures to
10 DEHP present in and on the vinyl/PVC handles of lanterns that defendants manufacture,
11 distribute and offer for sale or use throughout the State of California. Individuals not covered
12 by California's Occupational Safety Health Act, Labor Code § 6300 *et seq.* who purchase, use
13 or handle defendants' products are referred to hereinafter as "consumers."

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC handles of lanterns
15 that defendants manufacture, distribute, and offer for sale to consumers throughout the State of
16 California.

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

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

26 6. Defendants manufacture, distribute, import, sell, and/or offer for sale, in
27 California, without health hazard warnings, lanterns with vinyl/PVC handles containing DEHP,
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1 including, but not limited to, the *Rayovac Sportsman LED Lantern, SE3DLNA, UPC #0 12800*
2 *51706 0*. All such lanterns with vinyl/PVC handles containing DEHP are referred to
3 collectively hereinafter as "PRODUCTS."

4 7. Defendants' failure to warn consumers in the State of California of the health
5 hazards associated with exposures to DEHP in conjunction with defendants' sales of the
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
7 enjoinder of such conduct, as well as civil penalties for each violation. Health & Safety Code
8 §§ 25249.7(a) & (b)(1).

9 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
11 the required warning regarding the health hazards associated with exposures to DEHP. Health
12 & Safety Code § 25249.7(a).

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

15 PARTIES

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

20 11. Defendant SPECTRUM BRANDS, INC. ("SPECTRUM") is a person in the
21 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
22 25249.11.

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

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

3 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
4 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
5 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
6 sale or use in California.

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

10 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
11 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
12 retailers for sale or use in the State of California, or each implies by its conduct that it
13 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
14 individuals, businesses, or retailers for sale or use in the State of California.

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

18 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
19 individuals in the State of California.

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

25 20. SPECTRUM, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter be referred to collectively
27 as the "DEFENDANTS."

1 VENUE AND JURISDICTION

2 21. Venue is proper in the Superior Court for the County of San Francisco, pursuant
3 to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
4 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
5 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
6 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to
7 the PRODUCTS.

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

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

18 FIRST CAUSE OF ACTION

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

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

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

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

3 27. On January 29, 2016, plaintiff served a sixty-day notice of violation, together with
4 the accompanying certificate of merit, on SPECTRUM, the California Attorney General and all
5 other requisite public enforcers alleging that, as a result of DEFENDANTS’ sales of the
6 PRODUCTS, consumers in the State of California are being exposed to DEHP resulting from
7 their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a
8 “clear and reasonable warning” regarding the harms associated with exposures to DEHP, as
9 required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use, in violation of Health and Safety Code § 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
13 such, DEFENDANTS’ violations are ongoing and continuous and, unless enjoined, will
14 continue in the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
17 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
18 violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
22 consumers in California are not exempt from the “clear and reasonable” warning requirements
23 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations of
24 Proposition 65, resulting from their failure to provide warnings to consumers exposed to DEHP
25 from the PRODUCTS, have continued since as far back as January 29, 2013.

26 31. DEFENDANTS know or should know that the PRODUCTS they manufacture,
27 import, distribute, sell, and offer for sale in California contain DEHP.
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1. That the Court, pursuant to Health and Safety Code § 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 § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without a “clear and reasonable warning” in accordance with Title 27 of the California Code of Regulations § 25601 *et seq.*, regarding the harms associated with exposures to DEHP;
3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, § 25601 *et seq.*;
4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: June 10, 2016

Respectfully submitted,
THE CHANLER GROUP

By: Kimberly Gates
Kimberly Gates
Attorneys for Plaintiff
RUSSELL BRIMER