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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 13 2016

CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 M. JACOB & SONS; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. **CGC -16-553012**

**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 Brimer in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the health hazards caused by exposures to the toxic chemical lead found in metal
5 sprayer nozzles.

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 lead found in metal sprayer nozzles manufactured, distributed, and offered for sale
10 or use throughout the State of California. Individuals not covered by California’s Occupational
11 Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle Defendants’
12 products, are referred to hereinafter as “CONSUMERS.”

13 3. Detectable levels of lead are found in and on the metal sprayer nozzles that
14 Defendants manufacture, distribute, and offer for sale to CONSUMERS throughout the State of
15 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. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
22 lead as a chemical known to cause birth defects (and reproductive harm). Lead became subject
23 to the “clear and reasonable warning” requirements of the act one year later on February 27,
24 1988 Cal. Code Regs. tit. 27 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, metal sprayer nozzles that contain lead including, but not limited
27 to the *Sprayco All Purpose Plant Sprayer, UPC #0 46412 10374 8*. All such metal sprayer
28 nozzles containing lead are referred to collectively hereinafter as “PRODUCTS.”

1 and reasonable warning” regarding the harms associated with exposures to lead, as required by
2 Proposition 65.

3 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
4 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
5 violations have continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As
6 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
7 will continue in the future.

8 29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
9 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
10 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of
11 violation.

12 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
13 offer for sale or use in California cause exposures to lead as a result of the reasonably
14 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
15 consumers in California are not exempt from the “clear and reasonable” warning requirements
16 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations of
17 Proposition 65 as a result of their failure to provide warnings to consumers exposed to lead from
18 the PRODUCTS, have continued since as far back as January 29, 2013.

19 31. DEFENDANTS knew or should have known that the PRODUCTS they
20 manufacture, import, distribute, sell, and offer for sale in California contain lead.

21 32. Lead is present in or on the PRODUCTS in such a way as to expose consumers
22 through dermal contact and/or ingestion during reasonably foreseeable use.

23 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
24 continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of
25 Regulations, section 25602(b).

26 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
27 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

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1 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
2 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
3 currently in the chain of commerce in California without a “clear and reasonable warning” as
4 defined by California Code of Regulations title 27, section 25601 et seq.;

5 4. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

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

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8 Dated: July 12, 2016

Respectfully submitted,
THE CHANLER GROUP

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10 By: 
11 Josh Voorhees
12 Attorneys for Plaintiff
13 RUSSELL BRIMER
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