

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 CHANLER LAW GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

ENDORSED
FILED
Superior Court of California
County of San Francisco

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GORDON PARKILL, Clerk
BY: BLIZA REBEZALDEVAR
Deputy Clerk

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,
17 Plaintiff,

18 v.

19 ACCO BRANDS CORPORATION; A & W
20 PRODUCTS CO., INC.; THE ASHLEY
21 COLLECTION, INC.; COATS & CLARK
22 INC.; FOUR SEASONS GENERAL
23 MERCHANDISE, INC.; KOLE IMPORTS;
24 NATIONWIDE TRADING CORP.;
25 OFFICEMATE INTERNATIONAL
26 CORPORATION; PRYM CONSUMER USA
27 INC.; TOPCO ASSOCIATES, LLC;
28 KINGSTON MARKETING CO.; 99 CENTS
ONLY STORES; KMART CORPORATION;
LUCKY; SAVE MART SUPERMARKETS;
MICHAEL'S STORES, INC.; ORCHARD
SUPPLY HARDWARE STORES
CORPORATION; SEARS, ROEBUCK AND
CO.; THE TJX COMPANIES, INC.; and
DOES 1-600, inclusive,

Defendants.

Case No. CGC-09-485784

*SECOND AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF*

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

NATURE OF THE ACTION

1
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 presence of lead, a toxic chemical found in vinyl-coated paper fasteners, vinyl
5 coated measuring tapes, vinyl coated craft wire, and tape measures with hand straps sold in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
8 warn California citizens about their exposure to lead present in or on certain vinyl-coated paper
9 fasteners, vinyl coated measuring tapes, vinyl-coated craft wire, and tape measures with hand
10 straps that defendants manufacture, distribute and/or offer for sale to consumers throughout the
11 State of California.

12 3. Elevated levels of lead are commonly found in and on vinyl-coated paper
13 fasteners, vinyl coated measuring tapes, vinyl-coated craft wire, and tape measures with hand
14 straps that defendants manufacture, distribute, and/or offer for sale to consumers and businesses
15 throughout the State of California.

16 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
17 California Health & Safety Code § 25249.6 *et seq.* (Proposition 65), "No 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. . . ." (*Cal. Health & Safety Code § 25249.6.*)

21 5. On February 27, 1987, the State listed lead as a chemical known to cause birth
22 defects and other reproductive harm. Lead became subject to the warning requirement one year
23 later and was therefore subject to the "clear and reasonable warning" requirements of Proposition
24 65, beginning on February 27, 1988. (*27 CCR § 27001(c); Cal. Health & Safety Code*
25 *§ 25249.8.*)

26 6. Lead shall hereinafter be referred to as the "Listed Chemical."

27 7. Defendants ACCO Brands Corporation, A & W Products Co., Inc., The Ashley
28 Collection, Inc., Coats & Clark Inc., Four Seasons General Merchandise, Inc., Kingston

1 Marketing Co., Kole Imports, Nationwide Trading Corp., Officemate International Corporation,
2 Prym Consumer USA Inc., and Topco Associates, LLC, manufacture, distribute, and/or sell
3 vinyl-coated paper fasteners, vinyl coated measuring tapes, vinyl coated craft wire, and tape
4 measures with hand straps containing excessive levels of the Listed Chemical as follows:

5 a. Defendant ACCO Brands Corporation manufactures, distributes, and/or
6 sells colored, vinyl-coated paper fasteners including, but not limited to, *Vinyl Coated*
7 *Jumbo Clips #72523 (#0 50505 72523 6)*;

8 b. Defendant A & W Products Co., Inc. manufactures, distributes, and/or
9 sells vinyl-coated paper fasteners including, but not limited to, *A&W The Boxables Paper*
10 *Clips, Item No. 12104 (#0 79184 12104 7)*;

11 c. Defendant The Ashley Collection, Inc. manufactures, distributes, and/or
12 sells kits with vinyl coated measuring tapes including, but not limited to, *Protocol Car*
13 *Accident Kit, #5932-2 (#6 58531 59322 7)*;

14 d. Defendant Coats & Clark Inc. manufactures, distributes, and/or sells vinyl
15 coated tape measures including, but not limited to, *60" Tape Measure, No. 14485 (#0*
16 *77216 04485 2)*;

17 e. Defendant Four Seasons General Merchandise, Inc. manufactures,
18 distributes, and/or sells: (i) colored, vinyl-coated paper fasteners including, but not
19 limited to, *50&33mm Paper Clip, Item #16353 (#0 79522 16353 1)*; and (ii) tape
20 measures with hand straps including, but not limited to, *Tools & Hardware Measuring*
21 *Tape With Level, Item #41958 (#0 79522 41958 4)*;

22 f. Defendant Kole Imports manufactures, distributes, and/or sells: (i) vinyl
23 coated paper fasteners, including, but not limited to, *Sterling Stationery Jumbo Colored*
24 *Paper Clips, #OS074 (#7 31015 02661 6)*; (ii) vinyl coated measuring tapes including,
25 but not limited to, the *Sterling High Quality 4 Piece Tailors Set, #HS092 (#7 31015*
26 *03019 4)*; and (iii) vinyl coated craft wire including, but not limited to, *Krafters Korner*
27 *5pc Craft Wire, #CC092 (#7 31015 06589 9)*;

1 g. Defendant Nationwide Trading Corp. manufactures, distributes, and/or
2 sells colored, vinyl-coated paper fasteners including, but not limited to, *150PC Color*
3 *Paper Clips #NST244 (#7 04936 20244 5)*;

4 h. Defendant Officemate International Corporation manufactures, distributes,
5 and/or sells colored, vinyl-coated paper fasteners including, but not limited to, *100 #1*
6 *Paper Vinyl Coated Clips, Item #VC-1CA, Stock #97100 (#0 42491 97100 1)*;

7 i. Defendant Prym Consumer USA Inc. manufactures, distributes, and/or
8 sells vinyl coated tape measures including, but not limited to, *Michael's Tape Measure*
9 *10' (#0 72879 06784 2)*; and

10 j. Defendants Topco Associates, LLC and Kingston Marketing Co.
11 manufacture, distribute, and/or sell colored, vinyl-coated paper fasteners including, but
12 not limited to, *Academix 45 Giant Vinyl Coated Clips (#0 11225 03677 4)*.

13 8. Defendants 99 Cents Only Stores, Kmart Corporation, Lucky, Michael's Stores,
14 Inc., Orchard Supply Hardware Stores Corporation, Save Mart Supermarkets, Sears, Roebuck
15 and Co., and The TJX Companies, Inc. manufacture, distribute, and/or sell vinyl coated
16 measuring tapes and/or vinyl-coated paper fasteners¹ containing excessive levels of the Listed
17 Chemical as follows:

18 a. Defendant 99 Cents Only Stores manufactures, distributes, and/or sells
19 colored, vinyl-coated paper fasteners including, but not limited to, *Vinyl Coated Jumbo*
20 *Clips, #72523 (#0 50505 72523 6)*;

21 ///

22 ///

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24
25 ¹ The allegations in this *Second Amended* Complaint regarding defendants 99 Cents Only Stores, Kmart Corporation,
26 Lucky, Save Mart Supermarkets, Michael's Stores, Inc., Orchard Supply Hardware Stores Corporation, Sears,
27 Roebuck and Co. and The TJX Companies, Inc. do not include the distribution or sale of vinyl-coated paper fasteners
28 manufactured, distributed, and/or sold by A & W Products Co., Inc., Officemate International Corporation, and
Topco Associates, LLC and Kingston Marketing Co., provided that any settlement agreement requiring court
approval and involving Brimer on the one hand, and A & W Products Co., Inc., Officemate International Corporation,
or Topco Associates, LLC and Kingston Marketing Co., on the other hand., is entered by the Court.

1 b. Defendant Kmart Corporation manufactures, distributes, and/or sells
2 colored, vinyl-coated paper fasteners including, but not limited to, *Office Select Vinyl*
3 *Coated Paper Clips, #0-690883-111 (#0 72000 84994 1)*;

4 c. Defendants Lucky and Save Mart Supermarkets manufacture, distribute,
5 and/or sell colored, vinyl-coated paper fasteners including, but not limited to, (i) *Work*
6 *Essentials by Swingline Jumbo Vinyl Paper Clips, #71748 (#0 74711 71748 9)*, and (ii)
7 *Work Essentials by Swingline Standard Vinyl Paper Clips, #71749 (#0 74711 71749 6)*;

8 d. Defendant Michael's Stores, Inc. manufactures, distributes, and/or sells
9 colored, vinyl-coated paper fasteners including, but not limited to, *Work Essentials by*
10 *Swingline Jumbo Vinyl Paper Clips, #71748 (#0 74711 71748 9)*;

11 e. Defendants Orchard Supply Hardware Stores Corporation and Sears,
12 Roebuck and Co. manufacture, distribute, and/or sell colored, vinyl-coated paper
13 fasteners including, but not limited to, *Work Essentials by Swingline Jumbo Vinyl Paper*
14 *Clips, #71748 (#0 74711 71748 9)*; and

15 f. Defendant The TJX Companies, Inc. manufactures, distributes, and/or
16 sells kits with vinyl coated measuring tapes including, but not limited to, *Protocol Car*
17 *Accident Kit, #5932-2 (#6 58531 59322 7)*.

18 9. All such vinyl-coated paper fasteners, vinyl coated measuring tapes, and vinyl
19 coated craft wire, containing the Listed Chemical, as listed above in paragraphs 7(a) through 7(j),
20 and 8(a) through 8(f), shall hereinafter be referred to as the "Products."

21 10. Defendants' failures to warn consumers and/or other individuals in the State of
22 California about their exposure to the Listed Chemical in conjunction with defendants' sale of
23 the Products is a violation of Proposition 65 and subjects defendants to enjoinder of such
24 conduct as well as civil penalties for each such violation.

25 11. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
26 and permanent injunctive relief to compel defendants to provide purchasers or users of the
27 Products with the required warning regarding the health hazards of the Listed Chemical. (*Cal.*
28 *Health & Safety Code § 25249.7(a)*.)

1 24. Defendant Michael's Stores, Inc. ("Michael's") is a person doing business within
2 the meaning of California Health & Safety Code § 25249.11.

3 25. Defendant Nationwide Trading Corp. ("Nationwide") is a person doing business
4 within the meaning of California Health & Safety Code § 25249.11.

5 26. Officemate International Corporation ("Officemate") is a person doing business
6 within the meaning of California Health & Safety Code § 25249.11.

7 27. Defendant Orchard Supply Hardware Stores Corporation ("OSH") is a person
8 doing business within the meaning of California Health & Safety Code § 25249.11.

9 28. Defendant Prym Consumer USA Inc. ("Prym") is a person doing business within
10 the meaning of California Health & Safety Code § 25249.11.

11 29. Defendant Save Mart Supermarkets ("Save Mart") is a person doing business
12 within the meaning of California Health & Safety Code § 25249.11.

13 30. Defendant Sears, Roebuck and Co. ("Sears") is a person doing business within the
14 meaning of California Health & Safety Code § 25249.11.

15 31. Defendant The TJX Companies, Inc. ("TJX") is a person doing business within
16 the meaning of California Health & Safety Code § 25249.11.

17 32. Defendant Topco Associates, LLC ("Topco") is a person doing business within
18 the meaning of California Health & Safety Code § 25249.11.

19 33. Defendants 99 Cents, ACCO, A & W, Ashley, Coats & Clark, Four Seasons,
20 Kingston, Kmart, Kole, Lucky, Michael's, Nationwide, Officemate, OSH, Prym, Save Mart,
21 Sears, TJX, Topco, and each of them, manufacture, distribute, and/or offer the Products for sale
22 or use in the State of California or imply by their conduct that they manufacture, distribute
23 and/or offer the Products for sale or use in the State of California.

24 34. Defendants DOES 1-200 ("Manufacturer Defendants") are each persons doing
25 business within the meaning of California Health & Safety Code § 25249.11.

26 35. Manufacturer Defendants engage in the process of research, testing, designing,
27 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
28

1 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
2 more of the Products for sale or use in the State of California.

3 36. Defendants DOES 201-400 (“Distributor Defendants”) are each persons doing
4 business within the meaning of California Health & Safety Code § 25249.11.

5 37. Distributor Defendants distribute, exchange, transfer, process and/or transport one
6 or more of the Products to individuals, businesses or retailers for sale or use in the State of
7 California.

8 38. Defendants DOES 401-600 (“Retailer Defendants”) are each persons doing
9 business within the meaning of California Health & Safety Code § 25249.11.

10 39. Retailer Defendants offer the Products for sale primarily to individuals in the
11 State of California.

12 40. At this time, the true names of Defendants DOES 1 through 600, inclusive, are
13 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
14 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
15 each of the fictitiously named defendants is responsible for the acts and occurrences herein
16 alleged. When ascertained, their true names shall be reflected in an amended complaint.

17 41. Defendants 99 Cents, ACCO, A & W, Ashley, Coats & Clark, Four Seasons,
18 Kingston, Kmart, Kole, Lucky, Michael’s, Nationwide, Officemate, OSH, Prym, Save Mart,
19 Sears, TIX, Topco, Manufacturer Defendants, Distributor Defendants, and Retailer Defendants
20 shall, where appropriate, collectively be referred to hereinafter as “Defendants.”

21 VENUE AND JURISDICTION

22 42. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
23 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
24 because one or more instances of wrongful conduct occurred, and continues to occur, in the City
25 and County of San Francisco and/or because Defendants conducted, and continue to conduct,
26 business in this County with respect to the Products.

27 43. The California Superior Court has jurisdiction over this action pursuant to
28 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 is brought does not specify any other basis of subject matter jurisdiction.

3 44. The California Superior Court has jurisdiction over Defendants based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that either are citizens of the State of California, have sufficient minimum contacts in
6 the State of California, or otherwise purposefully avail themselves of the California market.
7 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California
8 courts consistent with traditional notions of fair play and substantial justice.

9 FIRST CAUSE OF ACTION

10 (Violation of Proposition 65 – Against All Defendants)

11 45. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 44, inclusive.

13 46. The citizens of the State of California have expressly stated in the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
15 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
16 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

17 47. Proposition 65 states, “No person in the course of doing business shall knowingly
18 and intentionally expose any individual to a chemical known to the state to cause cancer or
19 reproductive toxicity without first giving clear and reasonable warning to such individual....”
20 (*Id.*)

21 48. On November 28, 2008, a sixty-day notice of violation, together with the requisite
22 certificate of merit, was provided to:

23 a. A & W and various public enforcement agencies stating that as a result of
24 A & W’s sales of the products listed above in paragraph 7(b), purchasers and users in the
25 State of California were being exposed to the Listed Chemical resulting from the
26 reasonably foreseeable uses of the Products, without the individual purchasers and users
27 first having been provided with a “clear and reasonable warning” regarding such toxic
28 exposures; and

1 b. Kole and various public enforcement agencies stating that as a result of
2 Kole's sales of the products listed above in paragraph 7(f)(i), purchasers and users in the
3 State of California were being exposed to the Listed Chemical resulting from the
4 reasonably foreseeable uses of the Products, without the individual purchasers and users
5 first having been provided with a "clear and reasonable warning" regarding such toxic
6 exposures.

7 49. On December 23, 2008, a sixty-day notice of violation, together with the requisite
8 certificate of merit, was provided to:

9 a. ACCO and various public enforcement agencies stating that as a result of
10 ACCO's sales of the products listed above in paragraph 7(a), purchasers and users in the
11 State of California were being exposed to the Listed Chemical resulting from the
12 reasonably foreseeable uses of the Products, without the individual purchasers and users
13 first having been provided with a "clear and reasonable warning" regarding such toxic
14 exposures;

15 b. Nationwide and various public enforcement agencies stating that as a
16 result of Nationwide's sales of the products listed above in paragraph 7(g), purchasers
17 and users in the State of California were being exposed to the Listed Chemical resulting
18 from the reasonably foreseeable uses of the Products, without the individual purchasers
19 and users first having been provided with a "clear and reasonable warning" regarding
20 such toxic exposures; and

21 c. Topco, Kingston, and various public enforcement agencies stating that as a
22 result of Topco's and Kingston's sales of the products listed above in paragraph 7(j),
23 purchasers and users in the State of California were being exposed to the Listed Chemical
24 resulting from the reasonably foreseeable uses of the Products, without the individual
25 purchasers and users first having been provided with a "clear and reasonable warning"
26 regarding such toxic exposures.

27 50. On February 24, 2009, a supplemental sixty-day notice of violation, together with
28 the requisite certificate of merit, was provided to Kole, and various public enforcement agencies

1 stating that as a result of Kole's sales of the products listed above in paragraph 7(f), purchasers
2 and users in the State of California were being exposed to the Listed Chemical resulting from the
3 reasonably foreseeable uses of the Products, without the individual purchasers and users first
4 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

5 51. On March 5, 2009, a sixty-day notice of violation, together with the requisite
6 certificate of merit, was provided to:

7 a. Ashley, TJX, and various public enforcement agencies stating that as a
8 result of Ashley's, and TJX's sales of the products listed above in paragraphs 7(c) and
9 8(f), purchasers and users in the State of California were being exposed to the Listed
10 Chemical resulting from the reasonably foreseeable uses of the Products, without the
11 individual purchasers and users first having been provided with a "clear and reasonable
12 warning" regarding such toxic exposures.

13 b. Coats & Clark, and various public enforcement agencies stating that as a
14 result of Coats & Clark's sales of the products listed above in paragraph 7(d), purchasers
15 and users in the State of California were being exposed to the Listed Chemical resulting
16 from the reasonably foreseeable uses of the Products, without the individual purchasers
17 and users first having been provided with a "clear and reasonable warning" regarding
18 such toxic exposures.

19 c. Kmart, and various public enforcement agencies stating that as a result of
20 Kmart's sales of the products listed above in paragraph 8(b), purchasers and users in the
21 State of California were being exposed to the Listed Chemical resulting from the
22 reasonably foreseeable uses of the Products, without the individual purchasers and users
23 first having been provided with a "clear and reasonable warning" regarding such toxic
24 exposures.

25 d. Officemate, and various public enforcement agencies stating that as a
26 result of Officemate's sales of the products listed above in paragraph 7(h), purchasers and
27 users in the State of California were being exposed to the Listed Chemical resulting from
28 the reasonably foreseeable uses of the Products, without the individual purchasers and

1 users first having been provided with a “clear and reasonable warning” regarding such
2 toxic exposures.

3 52. On April 30, 2009, a sixty-day notice of violation, together with the requisite
4 certificate of merit, was provided to:

5 a. 99 Cents and various public enforcement agencies stating that as a result
6 of 99 Cents’ sales of the products listed above in paragraph 8(a), purchasers and users in
7 the State of California were being exposed to the Listed Chemical resulting from the
8 reasonably foreseeable uses of the Products, without the individual purchasers and users
9 first having been provided with a “clear and reasonable warning” regarding such toxic
10 exposures.

11 b. Lucky, Save Mart and various public enforcement agencies stating that as
12 a result of Lucky and Save Mart’s sales of the products listed above in paragraph 8(c),
13 purchasers and users in the State of California were being exposed to the Listed Chemical
14 resulting from the reasonably foreseeable uses of the Products, without the individual
15 purchasers and users first having been provided with a “clear and reasonable warning”
16 regarding such toxic exposures.

17 c. Michael’s and various public enforcement agencies stating that as a result
18 of Michael’s sales of the products listed above in paragraph 8(d), purchasers and users in
19 the State of California were being exposed to the Listed Chemical resulting from the
20 reasonably foreseeable uses of the Products, without the individual purchasers and users
21 first having been provided with a “clear and reasonable warning” regarding such toxic
22 exposures.

23 d. OSH, Sears, and various public enforcement agencies stating that as a
24 result of OSH’s and Sears’s sales of the products listed above in paragraph 8(e),
25 purchasers and users in the State of California were being exposed to the Listed Chemical
26 resulting from the reasonably foreseeable uses of the Products, without the individual
27 purchasers and users first having been provided with a “clear and reasonable warning”
28 regarding such toxic exposures.

1 53. On May 22, 2009, a sixty-day notice of violation, together with the requisite
2 certificate of merit, was provided to Prym, and various public enforcement agencies stating that
3 as a result of Prym's sales of the products listed above in paragraph 7(i), purchasers and users in
4 the State of California were being exposed to the Listed Chemical resulting from the reasonably
5 foreseeable uses of the Products, without the individual purchasers and users first having been
6 provided with a "clear and reasonable warning" regarding such toxic exposures.

7 54. On June 10, 2009, a sixty-day notice of violation, together with the requisite
8 certificate of merit, was provided to Four Seasons, and various public enforcement agencies
9 stating that as a result of Four Seasons' sales of the products listed above in paragraph 7(e)(i),
10 purchasers and users in the State of California were being exposed to the Listed Chemical
11 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers
12 and users first having been provided with a "clear and reasonable warning" regarding such toxic
13 exposures.

14 55. On August 14, 2009, a sixty-day notice of violation, together with the requisite
15 certificate of merit, was provided to Four Seasons, and various public enforcement agencies
16 stating that as a result of Four Seasons' sales of the products listed above in paragraph 7(e)(ii),
17 purchasers and users in the State of California were being exposed to the Listed Chemical
18 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers
19 and users first having been provided with a "clear and reasonable warning" regarding such toxic
20 exposures.

21 56. Defendants have engaged in the manufacture, distribution and/or offering of the
22 Products for sale or use in violation of California Health & Safety Code § 25249.6 and
23 Defendants' manufacture, distribution and/or offering of the Products for sale or use in violation
24 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendants'
25 receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such
26 violations will continue to occur into the future.

1 57. After receipt of the claims asserted in the sixty-day notices of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against Defendants under Proposition 65.

4 58. The Products manufactured, distributed, and/or offered for sale or use in
5 California by Defendants contained the Listed Chemical above the allowable state limits.

6 59. Defendants knew or should have known that the Products manufactured,
7 distributed, and/or offered for sale or use by Defendants in California contained the Listed
8 Chemical.

9 60. The Listed Chemical was present in or on the Products in such a way as to expose
10 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably
11 foreseeable use of the Products.

12 61. The normal and reasonably foreseeable use of the Products has caused and
13 continues to cause consumer exposures to the Listed Chemical, as such exposure is defined by
14 27 CCR § 25602(b).

15 62. Defendants had knowledge that the normal and reasonably foreseeable use of the
16 Products would expose individuals to the Listed Chemical through dermal contact and/or
17 ingestion.

18 63. Defendants, and each of them, intended that such exposures to the Listed
19 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,
20 non-accidental participation in the manufacture, distribution and/or offer for sale or use of
21 Products to individuals in the State of California.

22 64. Defendants failed to provide a “clear and reasonable warning” to those consumers
23 and/or other individuals in the State of California who were or who could become exposed to the
24 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use
25 of the Products.

26 65. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
27 directly by California voters, individuals exposed to the Listed Chemical through dermal contact
28 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by

1 Defendants without a "clear and reasonable warning," have suffered, and continue to suffer,
2 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

3 66. As a consequence of the above-described acts, Defendants, and each of them, are
4 liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
5 Health & Safety Code § 25249.7(b).

6 67. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

8 68. Wherefore, plaintiff prays for judgment against Defendants, and each of them, as
9 set forth hereinafter.

10 PRAYER FOR RELIEF

11 Wherefore, plaintiff prays for judgment against Defendants as follows:

12 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
13 civil penalties against Defendants, and each of them, in the amount of \$2,500 per day for each
14 violation alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
16 preliminarily and permanently enjoin Defendants, and each of them, from manufacturing,
17 distributing or offering the Products for sale or use in California, without providing "clear and
18 reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures
19 to the Listed Chemical;

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

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

22 Respectfully Submitted,

23 Dated: November 12, 2009

CHANLER LAW GROUP

24
25 By: Laurence Haveson
26 Laurence Haveson
27 Attorneys for Plaintiff
28 RUSSELL BRIMER