

1 Daniel Bornstein, State Bar No. 181711  
2 Christopher Martin, State Bar No. 186021  
3 Laralei S. Paras, State Bar No. 203319  
4 CHANLER LAW GROUP  
5 2560 Ninth Street  
6 Parker Plaza, Suite 214  
7 Berkeley, CA 94710-2565  
8 Telephone: (510) 848-8880  
9 Facsimile: (510) 848-8118

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KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Hendryx, Deputy

6 Attorneys for Plaintiff  
7 RUSSELL BRIMER

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF MARIN  
11 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 CVS PHARMACY, INC.; CVS CAREMARK  
16 CORPORATION; LONGS DRUGS STORES  
17 CORPORATION; and DOES 1-150, inclusive,

18 Defendants.

Case No. CIV 095908

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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BY FAX

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 presence of di(2-ethylhexyl)phthalate and lead, toxic chemicals found in eyeglass  
5 cases with vinyl components and vinyl purses sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn  
7 California citizens about their exposure to di(2-ethylhexyl)phthalate and lead, present in or on  
8 certain eyeglass cases with vinyl components and vinyl purses that defendants manufacture,  
9 distribute and/or offer for sale to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate and lead are commonly found in and on  
11 eyeglass cases with vinyl components and vinyl purses that defendants manufacture, distribute  
12 and/or offer for sale to consumers throughout the State of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* (Proposition 65), "No person in the course of  
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the  
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
17 such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as a  
19 chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate  
20 became subject to the warning requirement one year later and was therefore subject to the "clear and  
21 reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR §*  
22 *27001; Cal. Health & Safety Code § 25249.8.*)

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

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1           7.       Di(2-ethylhexyl)phthalate and lead shall be referred to hereinafter as the “LISTED  
2 CHEMICALS.”

3           8.       Studies show that pregnant woman subject to high levels of lead exposure face  
4 increased risks of spontaneous abortion and still birth. But even at low levels, lead exposure can  
5 adversely affect a pregnancy, causing premature birth, shortened gestation, decreased fetal growth  
6 and retarded fetal mental development. In a January 1997 report to Congress, United States  
7 Department of Health and Human Services (“HHS”) noted that the developing nervous system of a  
8 fetus is particularly vulnerable to lead toxicity. Studies by HHS and the United States Agency for  
9 Toxic Substances and Disease Registry report that the lead in the maternal blood can readily cross  
10 the placenta barrier and enter the developing brain and nervous system of the fetus.

11           9.       Defendants manufacture, distribute, and/or sell: (1) eyeglass cases with vinyl  
12 components containing excessive levels of the LISTED CHEMICALS including, but not limited to,  
13 the *Zoom Accessories Eyeglass Case* (#0 78041 08208 8); and (2) vinyl purses containing excessive  
14 levels of the LISTED CHEMICALS including, but not limited to, the *Princess Designer Purses* (#6  
15 *12020 00251 5*). All such eyeglass cases with vinyl components and vinyl purses containing the  
16 LISTED CHEMICALS shall hereinafter be referred to as the “PRODUCTS.”

17           10.      The allegations in this complaint are particularly significant where defendants’  
18 PRODUCTS target teenagers and women in their reproductive years.

19           11.      Defendants’ failures to warn consumers and/or other individuals in the State of  
20 California about their exposure to the LISTED CHEMICALS in conjunction with defendants’ sale  
21 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such  
22 conduct as well as civil penalties for each such violation.

23           12.      For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive  
24 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
25 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICALS.  
26 (*Cal. Health & Safety Code § 25249.7(a).*)

27           13.      Plaintiff also seeks civil penalties against defendants for their violations of  
28 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

PARTIES

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2       14. Plaintiff RUSSELL BRIMER, is a citizen of the State of California who is dedicated  
3 to protecting the health of California citizens through the elimination or reduction of toxic exposures  
4 from consumer products, and brings this action in the public interest pursuant to California Health &  
5 Safety Code § 25249.7.

6       15. Defendants CVS PHARMACY, INC. ("CVS"), CVS CAREMARK  
7 CORPORATION ("CAREMARK"), LONGS DRUGS STORES CORPORATION ("LONGS") are  
8 persons doing business within the meaning of California Health & Safety Code § 25249.11.

9       16. Defendant CVS offers the PRODUCTS for sale or use in the State of California or  
10 implies by its conduct that it distributes, and/or offers the PRODUCTS for sale or use in the State of  
11 California.

12       17. Defendant CAREMARK offers the PRODUCTS for sale or use in the State of  
13 California or implies by its conduct that it distributes, and/or offers the PRODUCTS for sale or use  
14 in the State of California.

15       18. Defendant LONGS offers the PRODUCTS for sale or use in the State of California or  
16 implies by its conduct that it distributes, and/or offers the PRODUCTS for sale or use in the State of  
17 California.

18       19. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
19 doing business within the meaning of California Health & Safety Code § 25249.11.

20       20. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
21 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage  
22 in the process of research, testing, designing, assembling, fabricating and/or manufacturing, one or  
23 more of the PRODUCTS for sale or use in the State of California.

24       21. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
25 doing business within the meaning of California Health & Safety Code § 25249.11.

26       22. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
27 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the  
28 State of California.



1 FIRST CAUSE OF ACTION

2 (Violation of Proposition 65 - Against All Defendants)

3 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 29, inclusive.

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

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

12 33. On June 30, 2009, and August 14, 2009, a sixty-day notice of violation, together with  
13 the requisite certificate of merit, was provided to CVS, CAREMARK, LONGS and various public  
14 enforcement agencies stating that as a result of the DEFENDANTS’ sales of certain PRODUCTS,  
15 purchasers and users in the State of California were being exposed to di(2-ethylhexyl)phthalate and  
16 lead resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
17 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
18 such toxic exposures.

19 34. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the  
20 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
21 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
22 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
23 DEFENDANTS’ receipt of plaintiff’s sixty-day notices of violation. Plaintiff further alleges and  
24 believes that such violations will continue to occur into the future.

25 35. After receipt of the claims asserted in the sixty-day notices of violation, the  
26 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause  
27 of action against DEFENDANTS under Proposition 65.

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1           36.     The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANTS contained the LISTED CHEMICALS above the allowable state  
3 limits.

4           37.     DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
5 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
6 CHEMICALS.

7           38.     The LISTED CHEMICALS were present in or on the PRODUCTS in such a way as  
8 to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion during  
9 the reasonably foreseeable use of the PRODUCTS.

10          39.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
11 continues to cause consumer exposures to the LISTED CHEMICALS, as such exposure is defined  
12 by 27 CCR § 25602(b).

13          40.     DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the  
14 PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal contact and/or  
15 ingestion.

16          41.     DEFENDANTS intended that such exposures to the LISTED CHEMICALS from the  
17 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental  
18 participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to  
19 individuals in the State of California.

20          42.     DEFENDANTS failed to provide a “clear and reasonable warning” to those  
21 consumers and/or other individuals in the State of California who were or who could become  
22 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the  
23 reasonably foreseeable use of the PRODUCTS.

24          43.     Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
25 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal  
26 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by  
27 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,  
28 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

