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10 RUSSELL BRIMER

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JUN 28 2012**

**CLERK OF THE SUPERIOR COURT  
By Barbara LaMotte Deputy**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION**

RUSSELL BRIMER,  
Plaintiff,

v.

R.R. DONNELLEY & SONS COMPANY;  
and DOES 1-150, inclusive,  
Defendants.

Case No. **RG12636902**

**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  
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 presence of di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical  
5 found in coverings for books sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
7 warn California citizens about the risk of exposure to DEHP present in and on the coverings for  
8 books manufactured, distributed, and/or offered for sale or use to consumers throughout the  
9 state of California.

10 3. High levels of DEHP are commonly found in and on the coverings for books that  
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of  
12 California.

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

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

23 6. Defendants manufacture, distribute, and/or sell coverings for books that contain  
24 excessive levels of DEHP, including, but not limited to, the *Adams Waterproof Vinyl Jacket,*  
25 *AFR13 (#0 87958 16813 6).* All such coverings for books containing DEHP are referred to  
26 collectively hereinafter as "PRODUCTS."

1 7. Defendants' failure to warn consumers and/or other individuals in the state of  
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
3 sale of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
4 of such conduct as well as civil penalties for each violation. (Cal. Health & Safety Code  
5 § 25249.7(a) & (b)(1).)

6 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
7 permanent injunctive relief to compel defendants to provide purchasers or users of the  
8 PRODUCTS with the required warning regarding the health hazards of the LISTED  
9 CHEMICAL. (Cal. Health & Safety Code § 25249.7(a).)

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

12 **PARTIES**

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

17 11. Defendant R.R DONNELLEY & SONS COMPANY ("DONNELLEY") is a  
18 person in the course of doing business within the meaning of California Health & Safety Code §  
19 25249.11.

20 12. Defendant DONNELLEY manufactures, distributes, and/or offers the PRODUCTS  
21 for sale or use in the State of California, or implies by its conduct that it manufactures,  
22 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

23 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
24 persons in the course of doing business within the meaning of California Health & Safety Code  
25 § 25249.11.

26 14. MANUFACTURER DEFENDANTS engage in the process of researching,  
27 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
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1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
2 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 in the course of doing business within the meaning of California Health & Safety Code  
5 § 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
8 in the State of California.

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
10 the course of doing business within the meaning of California Health & Safety Code  
11 § 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 state of California.

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

19 20. DONNELLEY, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
21 referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
24 Procedure §§ 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
25 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
26 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
27 county with respect to the PRODUCTS.



1 PRODUCTS, without the individual purchasers and users first having been provided with a  
2 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
4 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
5 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day  
6 notice of violation. Plaintiff further alleges that DEFENDANTS’ violations are ongoing and  
7 continuous in nature and, as such, will continue to occur in the future.

8 29. After receiving the claims asserted in the sixty-day notice of violation, the  
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
10 cause of action against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
13 allowable state limits, such that they require a “clear and reasonable” Proposition 65 warning.

14 31. DEFENDANTS knew or should have known that the PRODUCTS they  
15 manufactured, distributed, and/or offered for sale or use in California contain the LISTED  
16 CHEMICAL.

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

19 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
20 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
21 defined by Cal. Code Regs., tit. 27, § 25602(b).

22 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
23 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
24 and/or ingestion.

25 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
26 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
2 sale or use to individuals in the state of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and/or other individuals in the state of California who were or who could become  
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
6 reasonably foreseeable use of the PRODUCTS.

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

12 38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
14 Safety Code § 25249.7(b).

15 39. As a consequence of the above-described acts, California Health & Safety Code  
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

20 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
22 alleged herein;

23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
25 offering the PRODUCTS for sale or use in California without first providing “clear and/or  
26 reasonable warnings” as defined by Cal. Code Regs., tit. 27, § 25601, as to the harms associated  
27 with exposure the LISTED CHEMICAL;

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- 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: June 27, 2012

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Jennifer Henry  
Attorneys for Plaintiff  
RUSSELL BRIMER