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ENDORSED
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A. Ramirez
Deputy Clerk
Superior Court
County of Santa Clara, California

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,
13 Plaintiff,
14 v.
15 DALER-ROWNEY USA LIMITED; and
DOES 1-150, inclusive,
16 Defendants.
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Case No. **112CV227095**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. 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 pencil pouches sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain pencil pouches that
8 defendant manufactures, imports, distributes, and/or offers for sale to consumers throughout the
9 State of California.

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

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the "clear and reasonable warning"
18 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendant DALER-ROWNEY USA LIMITED ("Daler-Rowney" or "Defendant")
21 manufactures, imports, distributes, and/or sells pencil pouches containing DEHP including, but
22 not limited to, *Daler-Rowney The Art of Giving Linen Watercolour Book with 4 Artists*
23 *Watercolour Pencils, Item 476810710 (#5 011386 055732).*

24 6. All such pencil pouches containing DEHP, shall hereinafter be collectively
25 referred to as the "PRODUCTS."

1 7. Defendant's failure to warn consumers and/or other individuals in the State of
2 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
3 *seq.* about their exposure to DEHP in conjunction with Defendant's distribution, importation,
4 manufacture, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
5 Defendant to enjoinder of such conduct as well as civil penalties for each such violation.

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

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

PARTIES

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

17 11. Daler-Rowney is a person doing business within the meaning of California Health
18 & Safety Code § 25249.11.

19 12. Daler-Rowney manufactures, imports, distributes, and/or offers the PRODUCTS
20 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
21 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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1 28. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
2 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
3 § 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
4 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
5 continued to occur beyond Daler-Rowney's receipt of plaintiff's Notice. Plaintiff further alleges
6 and believes that such violations will continue to occur into the future.

7 29. After receipt of the claims asserted in the Notice, the appropriate public
8 enforcement agencies have failed to commence and diligently prosecute a cause of action against
9 DEFENDANTS under Proposition 65.

10 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
11 use in California by DEFENDANTS contained DEHP above the allowable state limits.

12 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
13 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
14 DEHP.

15 32. DEHP was present in or on the PRODUCTS in such a way as to expose
16 individuals to DEHP through dermal contact and ingestion during the reasonably foreseeable use
17 of the PRODUCTS.

18 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
19 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
20 27 California Code of Regulations ("CCR") § 25602(b).

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
22 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

23 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
24 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
25 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
26 individuals in the State of California.

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

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

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

13 39. As a consequence of the above-described acts, California Health & Safety Code
14 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
15 DEFENDANTS.

16 **PRAYER FOR RELIEF**

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

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

21 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
22 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
23 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
24 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;

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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 21, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Harris A. Weinstein
Attorneys for Plaintiff
RUSSELL BRIMER