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ENDORSED  
FILED  
ALAMEDA COUNTY  
OCT 26 2012  
CLERK OF THE SUPERIOR COURT  
By RGILL Deputy

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

RUSSELL BRIMER,  
Plaintiff,

v.

FLAMBEAU, INC.; and DOES 1-150,  
inclusive,  
Defendants.

Case No. RG12653763

**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 lead, di(2-ethyl-hexyl)phthalate ("DEHP") and di-n-  
5 butyl phthalate ("DBP"), toxic chemicals found in portfolio cases and messenger bags sold in  
6 California.

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

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

16 4. On February 27, 1987, the state of California identified and listed lead as a  
17 chemical known to cause birth defects and other reproductive harm. Lead became subject to the  
18 "clear and reasonable warning" requirements of Proposition 65 one year later on February 27,  
19 1988. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health & Safety Code §§ 25249.8 &  
20 25249.10(b).)

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

26 6. On December 2, 2005, California identified and listed DBP as a chemical known  
27 to cause birth defects and other reproductive harm. DBP became subject to the warning  
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1 requirement one year later and was, therefore, subject to the “clear and reasonable warning”  
2 requirements of Proposition 65, beginning on December 2, 2006. (27 CCR § 27001 (c); Cal.  
3 Health & Safety Code §§ 25249.8 & 25249.10(b). Lead, DEHP and DBP are referred to  
4 hereinafter as the “LISTED CHEMICALS.”

5 7. Defendants manufacture, distribute, and/or sell portfolio cases containing  
6 excessive levels of DEHP and DBP, including, but not limited to, the *ArtBin ToteFolio*,  
7 #8000SA (#0 71617 08001 3); and messenger bags that contain excessive levels of DEHP and  
8 lead, including, but not limited to, the *ArtBin Messenger Bag*, #6904SA (#0 71617 94022 5).  
9 All such portfolio cases containing DEHP and DBP, and messenger bags containing DEHP and  
10 lead are referred to collectively hereinafter as the “PRODUCTS.”

11 8. Defendants’ failure to warn consumers and/or other individuals in the state of  
12 California about their exposure to the LISTED CHEMICALS in conjunction with defendants’  
13 sale of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
14 of such conduct as well as civil penalties for each violation. (Cal. Health & Safety Code  
15 § 25249.7(a) & (b)(1).)

16 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
17 permanent injunctive relief to compel defendants to provide purchasers or users of the  
18 PRODUCTS with the required warning regarding the health hazards of the LISTED  
19 CHEMICALS. (Cal. Health & Safety Code § 25249.7(a).)

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

## 22 PARTIES

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

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1           12. Defendant FLAMBEAU, INC. (“FLAMBEAU”) is a person in the course of  
2 doing business within the meaning of California Health & Safety Code § 25249.11.

3           13. FLAMBEAU manufactures, distributes, and/or offers the PRODUCTS for sale or  
4 use in the State of California, or implies by its conduct that it manufactures, distributes, and/or  
5 offers the PRODUCTS for sale or use in the State of California.

6           14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
7 persons in the course of doing business within the meaning of California Health & Safety Code  
8 § 25249.11.

9           15. MANUFACTURER DEFENDANTS engage in the process of researching,  
10 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
11 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
12 manufacturing, one or more of the PRODUCTS for sale or use in the state of California.

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

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

19           18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
20 the course of doing business within the meaning of California Health & Safety Code  
21 § 25249.11.

22           19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
23 state of California.

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

3 21. FLAMBEAU, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
4 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
5 referred to as "DEFENDANTS."

6 **VENUE AND JURISDICTION**

7 22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
8 Procedure §§ 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
9 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
10 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
11 county with respect to the PRODUCTS.

12 23. The California Superior Court has jurisdiction over this action pursuant to  
13 California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction  
14 in all causes except those given by statute to other trial courts." The statute under which this  
15 action is brought does not specify any other basis of subject matter jurisdiction.

16 24. The California Superior Court has jurisdiction over DEFENDANTS based on  
17 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
18 association that is a citizen of the state of California, has sufficient minimum contacts in the  
19 state of California, or otherwise purposefully avails itself of the California market.  
20 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
21 California courts consistent with traditional notions of fair play and substantial justice.

22 **FIRST CAUSE OF ACTION**

23 **(Violation of Proposition 65 - Against All Defendants)**

24 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
25 Paragraphs 1 through 24, inclusive.

26 26. In passing Proposition 65, the citizens of the State of California expressed their  
27 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that  
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1 they must be “informed about exposures to chemicals that cause cancer, birth defects, or other  
2 reproductive harm.”

3         27.       Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
4 and intentionally expose any individual to a chemical known to the state to cause cancer or  
5 reproductive toxicity without first giving clear and reasonable warning to such individual . . . .”  
6 Health & Safety Code § 25249.6.

7         28.       On or about April 5, 2012, plaintiff’s sixty-day notice of violation, together with  
8 the requisite certificate of merit, was provided to FLAMBEAU and certain requisite public  
9 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS  
10 containing the LISTED CHEMICALS, purchasers and users in the state of California were  
11 being exposed to the LISTED CHEMICALS resulting from the reasonably foreseeable use of  
12 the PRODUCTS, without the individual purchasers and users first having been provided with a  
13 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

22         31.       The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
23 California by DEFENDANTS contain the LISTED CHEMICALS in amounts above the  
24 allowable state limits, such that they require a “clear and reasonable” Proposition 65 warning.

25         32.       DEFENDANTS knew or should have known that the PRODUCTS they  
26 manufactured, distributed, and/or offered for sale or use in California contain the LISTED  
27 CHEMICALS.

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1           33. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as  
2 to expose individuals through dermal contact and/or ingestion during reasonably foreseeable  
3 use.

4           34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
5 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are  
6 defined by Cal. Code Regs., tit. 27, § 25602(b).

7           35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
8 the PRODUCTS exposes individuals to the LISTED CHEMICALS through dermal contact  
9 and/or ingestion.

10          36. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from  
11 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
12 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
13 sale or use to individuals in the state of California.

14          37. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
15 consumers and/or other individuals in the state of California who were or who could become  
16 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the  
17 reasonably foreseeable use of the PRODUCTS.

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

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

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