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Laurence D. Haveson, State Bar No. 152631
Rachel S. Doughty, State Bar No. 255904
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

ENDORSED
FILED
ALAMEDA COUNTY
OCT 10 2012
CLERK OF THE SUPERIOR COURT
By **PILIPINO TUNGOHAN** Deputy

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

RUSSELL BRIMER,

Plaintiff,

v.

VISUAL HORIZONS INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. **RG12651439**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

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 the toxic chemical di(2-ethylhexyl)phthalate (“DEHP”),
5 found in plastic/vinyl/PVC checkbook covers.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive harms associated with their exposure to DEHP in or
8 on plastic/vinyl/PVC checkbook covers that defendants manufacture, import, distribute, and/or
9 offer for sale to consumers throughout the State of California.

10 3. High levels of the DEHP are commonly found in and/or on plastic/vinyl/PVC
11 checkbook covers that defendants manufacture, import, distribute, and/or offer for sale to
12 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”), “[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 as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
20 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. 27
21 Cal. Code Regs. § 27001(c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. Defendants manufacture, import, distribute, sell and/or offer for sale in California,
23 plastic/vinyl/PVC checkbook covers containing DEHP including but not limited to, the
24 *ScrapSMART Variety Pack Plastic Covers for Checkbook, Memo Book, Cards, Bookmark, Item*
25 *#VPV1 (#8 25041 00411 0)* (“PRODUCTS”).

26 7. Defendants’ failure to warn consumers and/or other individuals in the State of
27 California about their exposure to DEHP and the risks of harm associated with such exposure, in
28 conjunction with defendants’ distribution, importation, manufacturing, and/or sale of

1 plastic/vinyl/PVC checkbook covers containing DEHP is a violation of Proposition 65 and
2 subjects defendants to enjoinder of such conduct as well as civil penalties for each such
3 violation.

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

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

10 **PARTIES**

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

15 11. Defendant VISUAL HORIZONS INC. ("VISUAL HORIZONS") is a person in
16 the course of doing business within the meaning of California Health & Safety Code §
17 25249.11.

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

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

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

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

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

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

10 18. RETAILER DEFENDANTS offer PRODUCTS for sale to individuals in the State
11 of California.

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

17 20. VISUAL HORIZONS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as “DEFENDANTS.”

20 VENUE AND JURISDICTION

21 21. Venue is proper in the Alameda County Superior Court pursuant to California
22 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
23 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to
24 occur, in Alameda County, and/or because DEFENDANTS conducted, and continue to conduct,
25 business in this county with respect to the PRODUCTS.

26 22. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
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1 in all causes except those given by statute to other trial courts.” The statute under which this
2 action is brought does not specify any other basis of subject matter jurisdiction.

3 23. 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,
5 or association that is a citizen of the State of California, has sufficient minimum contacts in the
6 State of California, or otherwise purposefully avails itself of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

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

17 26. Proposition 65 states, “[n]o person in the course of doing business shall
18 knowingly and intentionally expose any individual to a chemical known to the state to cause
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such
20 individual....” *Id.*

21 27. On or about July 11, 2012, plaintiff’s sixty-day notice of violation, together with
22 the requisite certificate of merit, was provided to VISUAL HORIZONS and various public
23 prosecutors stating that, as a result of the DEFENDANTS’ manufacture, import, distribution,
24 and/or sale of plastic/vinyl/PVC checkbook covers containing DEHP including, but not limited
25 to, the *ScrapSMART Variety Pack Plastic Covers for Checkbook, Memo Book, Cards,*
26 *Bookmark, Item #PVP1 (#8 25041 00411 0)*, purchasers and users in the State of California
27 were exposed to DEHP resulting from the reasonably foreseeable use of the PRODUCTS,
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1 without the individual purchasers and users first having received a “clear and reasonable
2 warning” regarding such toxic exposures.

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

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

12 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
13 use in California by DEFENDANTS contain DEHP in an amount above the allowable state
14 limits.

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

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

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

23 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

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

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/or ingestion during the reasonably foreseeable
4 use of 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/or
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 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) specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

15 **PRAYER FOR RELIEF**

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

- 17 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
18 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
19 alleged herein;
- 20 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
21 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
22 distributing, and/or offering PRODUCTS for sale or use in California, without first providing
23 “clear and reasonable warnings” as defined by California Code of Regulations title 27, § 25601
24 as to the harms associated with exposure to the DEHP;
- 25 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 26 4. That the Court grant such other and further relief as may be just and proper.

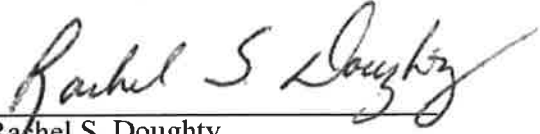
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Dated: October 9, 2012

Respectfully Submitted,

THE CHANLER GROUP

By: 
Rachel S. Doughty
Attorneys for Plaintiff
RUSSELL BRIMER