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ENDORSED
FILED
ALAMEDA COUNTY

OCT 26 2012

CLERK OF THE SUPERIOR COURT
By LYNN WILEY Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
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16 RUSSELL BRIMER,
17 Plaintiff,
18 v.
19 BANDWAGON, INC.;
20 and DOES 1-150, inclusive,
21 Defendants.

Case No. **RG12 65 3 777**

**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 the vinyl/PVC covers of checkbooks sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about the risk of exposure to DEHP present in and on the vinyl/PVC
8 covers of checkbooks manufactured, distributed, and offered for sale or use to consumers
9 throughout the State of California.

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

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

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

23 6. Defendants manufacture, distribute, and sell checkbooks with vinyl/PVC covers
24 that contain excessive levels of DEHP, including, but not limited to, the *Photo Checkbook*
25 *Cover, Item No.: L0530 (#0 52598 60530 3)*. All such vinyl/PVC checkbook covers containing
26 DEHP are hereinafter collectively referred to as “PRODUCTS.”
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1 violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
2 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature
3 and will continue to occur in the future.

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

7 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
8 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
9 allowable State limits, such that they require a "clear and reasonable" warning under
10 Proposition 65.

11 31. DEFENDANTS knew or should have known that the PRODUCTS they
12 manufacture, distribute, and/or offer for sale or use in California contain the LISTED
13 CHEMICAL.

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

16 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
17 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
18 defined by California Code of Regulations Title 27, § 25602(b).

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

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

26 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and other individuals in the State of California who were or who could become
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1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
2 reasonably foreseeable use of the PRODUCTS.

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

8 38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
9 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for
10 each violation.

11 39. As a consequence of the above-described acts, Health and Safety Code
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
16 follows:

- 17 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil
18 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 19 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily
20 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
21 PRODUCTS for sale or use in California without first providing a “clear and reasonable
22 warning” as defined by California Code of Regulations Title 27, § 25601 *et seq.*, as to the harms
23 associated with exposures the LISTED CHEMICAL;
- 24 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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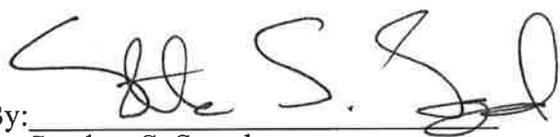
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4. That the Court grant such other and further relief as may be just and proper.

Dated: October 24, 2012

Respectfully Submitted,
THE CHANLER GROUP



By: _____
Stephen S. Sayad
Attorneys for Plaintiff
RUSSELL BRIMER