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Attorneys for Plaintiff  
RUSSELL BRIMER

**FILED**

NOV 30 2012

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

vs.

DGL GROUP LTD. and DOES 1-150,

Defendants.

Case No. C 101205318

**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 BRIMER,  
3 in the public interest of the citizens of the State of California, to enforce the People's right to be  
4 informed of the presence of Di(2ethylhexyl)phthalate ("DEHP"), a toxic chemical found in and  
5 on certain vinyl/PVC cases for electronic devices manufactured, distributed and/or otherwise  
6 sold by defendants in California.

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

12 3. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical  
13 known to cause birth defects and other reproductive harm. DEHP became subject to the  
14 warning requirement one year later and was therefore subject to the "clear and reasonable  
15 warning" requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c);  
16 *Cal. Health & Safety Code* § 25249.8.)

17 4. DEHP shall hereinafter be referred to as "LISTED CHEMICAL."

18 5. Significant levels of DEHP have been discovered in or on the vinyl/PVC  
19 electronic device cases that defendants manufacture, distribute, and/or offer for sale to  
20 consumers throughout the State of California including, but not limited to, Hype Reptile Case  
21 (Item# HY-1019-IPD-BLKIZ, Product #: 8 22248 51066 6).

22 6. All such vinyl/PVC electronic device cases containing the LISTED CHEMICAL  
23 shall hereinafter be referred to as the "PRODUCTS."

24 7. Defendants' failure to warn consumers and/or other individuals in the State of  
25 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'  
26 sale of the PRODUCTS is a violation of Proposition 65.

27 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
28 permanent injunctive relief to compel defendants to provide purchasers or users of the

1 PRODUCTS with the required warning regarding the health hazards of the LISTED  
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

5 **PARTIES**

6 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated  
7 to protecting the health of California citizens through the elimination or reduction of toxic  
8 exposures from consumer products, and brings this action in the public interest pursuant to  
9 California Health & Safety Code Section 25249.7.

10 11. Defendant DGL GROUP LTD. (hereafter "DGL") is a person doing business  
11 within the meaning of California Health & Safety Code Section 25249.11.

12 12. Defendant DGL manufactures, distributes, and/or offers the PRODUCTS for sale  
13 or use in the State of California or implies by its conduct that it manufactures, distributes,  
14 and/or offers the PRODUCTS for sale or use in the State of California.

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

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

21 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
22 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

26 17. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
27 business within the meaning of California Health & Safety Code Section 25249.11.



1 FIRST CAUSE OF ACTION

2 (Violation of Proposition 65 - Against All Defendants)

3 24. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 23, inclusive.

5 25. In passing Proposition 65, the citizens of the State of California expressed their  
6 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986  
7 that they must be "informed about exposures to chemicals that cause cancer, birth defects, or  
8 other reproductive harm."

9 26. Proposition 65 states, "[n]o person in the course of doing business shall  
10 knowingly and intentionally expose any individual to a chemical known to the state to cause  
11 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
12 individual . . . ." Health & Safety Code § 25249.6.

13 27. On August 1, 2012, a sixty-day notice of violation ("60-Day Notice"), supported  
14 by the requisite Certificate of Merit, was served upon DGL and various public enforcement  
15 agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and  
16 users in the State of California are being exposed to lead resulting from the reasonably  
17 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
18 been provided with a "clear and reasonable warning" regarding such toxic exposures.

19 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering  
20 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section  
21 25249.6 and plaintiff is informed and believes that DEFENDANTS' manufacture, distribution,  
22 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety  
23 Code Section 25249.6 has continued to occur beyond DGL's receipt of plaintiff's 60-Day Notice.  
24 Plaintiff further alleges and believes that such violations are reasonably likely to occur into the  
25 future absent express injunctive relief.

26 29. After receipt of the claims asserted in the 60-Day Notice, the appropriate public  
27 enforcement agencies have failed to commence and diligently prosecute a cause of action  
28 against DEFENDANTS under Proposition 65.

1           30.    The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANTS, contain the LISTED CHEMICAL.

3           31.    DEFENDANTS knew or should have known that the PRODUCTS contained the  
4 LISTED CHEMICAL.

5           32.    The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
6 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
7 25602(b), through dermal contact and/or ingestion during the reasonably foreseeable use of  
8 the PRODUCTS.

9           33.    DEFENDANTS knew or should have known that the reasonably foreseeable use  
10 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
11 and/or ingestion.

12          34.    DEFENDANTS' participation in the manufacture, distribution and/or offer for  
13 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-  
14 accidental.

15          35.    DEFENDANTS failed to provide a "clear and reasonable warning" to those  
16 consumers and/or other individuals in the State of California who were or who could become  
17 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

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

23          37.    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 of Proposition 65 pursuant to  
25 California Health & Safety Code Section 25249.7(b).

26          38.    As a consequence of the above-described acts, California Health & Safety Code  
27 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
28 DEFENDANTS.

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**PRAYER FOR RELIEF**

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

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

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

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: November 26, 2012

Respectfully submitted,

THE CHANLER GROUP

By:   
Gregory M. Sheffer  
Attorneys for Plaintiff  
RUSSELL BRIMER