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ENDORSED
FILED
ALAMEDA COUNTY

MAR 06 2013

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 WOLTERS KLUWER UNITED STATES
18 INC.; WOLTERS KLUWER HEALTH, INC.;
19 and DOES 1-150, inclusive,

20 Defendants.

Case No. 13-670589

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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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 di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in vinyl/PVC notebooks sold in California.

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

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

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 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” Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, 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. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell vinyl/PVC notebooks that contain
24 DEHP in levels that require a warning under Proposition 65, including, but not limited to, the
25 *Pocket Notebook Pocket Medicine, ISBN 978-1-60831-905-3*. All such vinyl/PVC notebooks
26 containing DEHP are referred to collectively hereinafter as “PRODUCTS.”
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1 14. WOLTERS KLUWER HEALTH manufactures, distributes, and/or offers the
2 PRODUCTS for sale or use in the state of California, or implies by its conduct that it
3 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.

4 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
5 persons in the course of doing business within the meaning of Health and Safety Code section
6 25249.11.

7 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
8 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
9 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
10 California.

11 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

13 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
15 in the state of California.

16 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
17 the course of doing business within the meaning of Health and Safety Code section 25249.11.

18 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
19 state of California.

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

25 22. WOLTERS KLUWER U.S., WOLTERS KLUWER HEALTH,
26 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER
27 DEFENDANTS shall, where appropriate, collectively be referred to as “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

2 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
5 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
6 county with respect to the PRODUCTS.

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

11 25. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
13 association that is a citizen of the state of California, has sufficient minimum contacts in the
14 state of California, and/or otherwise purposefully avails itself of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
16 California courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

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

21 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
22 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
23 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
24 harm.”

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

3 29. On August 16, 2012, plaintiff’s sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to WOLTERS KLUWER U.S., WOLTERS
5 KLUWER HEALTH and certain public enforcement agencies stating that, as a result of
6 DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers
7 and users in the state of California were being exposed to the LISTED CHEMICAL resulting
8 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
9 users first having been provided with a “clear and reasonable warning” regarding such toxic
10 exposures, as required by Proposition 65.

11 30. DEFENDANTS have engaged in the manufacture, distribution, and offering of
12 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
13 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
14 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
15 and will continue to occur in the future.

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

19 32. The PRODUCTS manufactured, distributed, and offered for sale or use in
20 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
21 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
22 65.

23 33. DEFENDANTS knew or should have known that the PRODUCTS they
24 manufacture, distribute, and offer for sale or use in California contain the LISTED
25 CHEMICAL.

26 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
27 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.
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1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

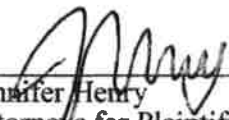
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures 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: March 11th, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 
Jennifer Henry
Attorneys for Plaintiff
RUSSELL BRIMER