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FILED

MAR 26 2013

**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,
16 Plaintiff,

17 v.

18 DELUXE CORPORATION; DIRECT
19 CHECKS UNLIMITED, LLC; and DOES 1-
20 150, inclusive,

21 Defendants.

Case No. CIV 1301293

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. 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 checkbook covers with vinyl/PVC sold in the State of 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 or on certain checkbook
8 covers with vinyl/PVC components that defendants manufacture, import, distribute, and/or offer
9 for sale to consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on the checkbook covers with
11 vinyl/PVC components that defendants manufactured, imported, distributed, and/or offered for
12 sale to consumers throughout the State of 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 ..." (Cal. 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" requirement of Proposition 65 one year later on
21 October 24, 2004. (Tit. 27 Cal. Code Regs. ("CCR") § 27001(c); Cal. Health & Safety Code §§
22 25249.8 & 25249.10(b).)

23 6. Defendants manufacture, import, distribute, and/or offer for sale checkbook
24 covers with vinyl/PVC components containing DEHP in levels that require a warning under
25 Proposition 65 including, but not limited to, the *Burgundy Leather Tri-fold*, #228275. All such
26 checkbook covers with vinyl/PVC components containing DEHP shall hereinafter be referred to
27 as the "PRODUCTS."

28 7. Defendants' failure to warn consumers and/or other individuals in the State of

1 California about their exposure to DEHP in conjunction with defendants' distribution,
2 importation, manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and
3 subjects defendants to enjoinder of such conduct as well as civil penalties for each such
4 violation. (Cal. Health & Safety Code §§ 25249.7(a) & (b)(1).)

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

9 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
10 penalties against defendants for their violations of Proposition 65.

11 **PARTIES**

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

16 11. Defendant DELUXE CORPORATION ("DELUXE") is a person in the course of
17 doing business within the meaning of Health and Safety Code section 25249.11.

18 12. Defendant DELUXE manufactures, imports, distributes, and/or offers the
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 the PRODUCTS for sale or use in the State of
21 California.

22 13. Defendant DIRECT CHECKS UNLIMITED, LLC ("DIRECT CHECKS") is a
23 person in the course of doing business within the meaning of California Health & Safety Code §
24 25249.11.

25 14. Defendant DIRECT CHECKS manufactures, distributes, and/or offers the
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
27 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
28 California.

1 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
2 persons in the course of doing business within the meaning of Health and Safety Code section
3 25249.11.

4 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

8 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
9 in the course of doing business within the meaning of California Health and Safety Code section
10 25249.11.

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

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

17 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

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

24 22. DELUXE, DIRECT CHECKS, MANUFACTURER DEFENDANTS,
25 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
26 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, & 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 the
5 County of Alameda, and/or because DEFENDANTS conducted, and continue to conduct,
6 business in this 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,
13 or association that is a citizen of the State of California, has sufficient minimum contacts in the
14 State of California, 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 and 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
27 cancer or reproductive toxicity without first giving clear and reasonable warning to such
28 individual....” (Cal. Health & Safety Code, § 25249.6.)

1 29. On or about April 31, 2012, plaintiff's sixty-day notice of violation, together with
2 the requisite certificate of merit, was provided to DELUXE, DIRECT CHECKS, and certain
3 public enforcement agencies stating that, as a result of DEFENDANTS' sales of the
4 PRODUCTS containing DEHP, purchasers and users in the State of California were being
5 exposed to DEHP resulting from the reasonably foreseeable use of the PRODUCTS, without the
6 individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures, as require by Proposition 65.

8 30. DEFENDANTS have engaged in the manufacture, importation, distribution,
9 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code §
10 25249.6, and such violations have continued to occur beyond DEFENDANTS' receipt of
11 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and
12 continuous in nature, and will continue to occur in the future.

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

16 32. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
17 use in the State of California by DEFENDANTS contained DEHP in an amount above the
18 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
19 65.

20 33. DEFENDANTS knew or should have known that the PRODUCTS they
21 manufacture, import, distribute, and/or offer for sale or use in State of California contained
22 DEHP.

23 34. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
24 to DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the
25 PRODUCTS.

26 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
27 continue to cause, consumer and workplace exposures to DEHP, as such exposures are defined
28 by California Code of Regulations title 27, section 25602(b).

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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 to DEHP;

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 28, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 
Stephen E. Cohen
Attorneys for Plaintiff
RUSSELL BRIMER