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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,
15 Plaintiff,
16 v.
17 DALER-ROWNEY USA LIMITED; and
18 DOES 1-150, inclusive,
19 Defendants.

20 Case No. 113CV242949
21)
22)
23) **COMPLAINT FOR CIVIL PENALTIES**
24) **AND INJUNCTIVE RELIEF**
25)
26) (Health & Safety Code. § 25249.6 *et seq.*)
27)
28)

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Russell Brimer in
3 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(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in
5 vinyl/PVC brush cases/pouches 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 vinyl/PVC brush
8 cases/pouches manufactured, distributed, and offered for sale or use to consumers throughout
9 the State of California.

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

15 4. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
16 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
17 subject to the "clear and reasonable warning" requirements of the act one year later on October
18 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
19 25249.10(b).

20 5. Defendants manufacture, distribute, and sell vinyl/PVC brush cases/pouches that
21 contain DEHP in levels that require a warning under Proposition 65 including, but not limited
22 to, *Round LH Brush Case Leatherette, Item Number: 0v07248000000* and *Robert Simmons*
23 *Expression Teacher Selection Premium Quality Brush Set, #265500002 (#0 38372 02040 1)*.
24 All such vinyl/PVC brush cases/pouches containing DEHP are collectively referred to
25 hereinafter as "PRODUCTS."

26 6. Defendants' failure to warn consumers and other individuals in the State of
27 California about their exposure to DEHP in conjunction with defendants' sales of the
28

1 PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such
2 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) &
3 (b)(1).

4 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
5 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. Health & Safety
7 Code § 25249.7(a).

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

10 PARTIES

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

15 10. Defendant Daler-Rowney USA Limited ("DALER-ROWNEY") is a person in the
16 course of doing business within the meaning of Health and Safety Code section 25249.11.

17 11. DALER-ROWNEY manufactures, distributes, and/or offers the PRODUCTS for
18 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,
19 and/or offers the PRODUCTS for sale or use in the State of California.

20 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons in the course of doing business within the meaning of Health and Safety Code section
22 25249.11.

23 13. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
24 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
25 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
26 California.

1 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's Notice.
2 As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to
3 occur in the future.

4 28. After receiving the claims asserted in the Notice, the appropriate public
5 enforcement agencies have failed to commence and diligently prosecute a cause of action
6 against DEFENDANTS under Proposition 65.

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

10 30. DEFENDANTS knew or should have known that the PRODUCTS they
11 manufactured, distributed, and offered for sale or use in California contained DEHP.

12 31. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
13 through dermal contact and/or ingestion during reasonably foreseeable use.

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

17 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
18 of the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

19 34. DEFENDANTS intended that such exposures to DEHP from the reasonably
20 foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
21 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to
22 individuals in the State of California.

23 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 consumers and other individuals in the State of California who were or who would become
25 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
26 uses of the PRODUCTS.

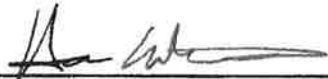
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 8, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 

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Attorneys for Plaintiff
RUSSELL BRIMER