

ENDORSED
FILED
ALAMEDA COUNTY

MAR 19 2013

CLERK OF THE SUPERIOR COURT
By Amel Dhillon Deputy

1 Laralei Paras, State Bar No. 203319
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 HOBBY LOBBY STORES, INC.; and DOES
20 1-150, inclusive,

21 Defendants.

Case No. RG13672016

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

22
23
24
25
26
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 scrapbook albums sold in California.

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

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC scrapbook
11 albums that Defendants manufacture, distribute, and offer for sale to consumers throughout the
12 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 the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 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 24,
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
22 DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without warning in
24 California, vinyl/PVC scrapbook albums containing DEHP, including, but not limited to, *The Paper*
25 *Studio 8x8 Post Bound Scrapbook Album, Item #649657 (#0 09720 16515 0)*. All such vinyl/PVC
26 scrapbook albums containing DEHP are referred to hereinafter as “PRODUCTS.”

27 ///

28 ///

1 7. Defendants' failure to warn consumers and other individuals in the State of California
2 about their exposure to the LISTED CHEMICAL in conjunction with Defendants' sales of the
3 PRODUCTS is a violation of Proposition 65, and subjects Defendants to enjoinder of such
4 conduct as well as civil penalties for each violation. 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 the LISTED CHEMICAL.
8 Health & 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 dedicated
13 to protecting the health of California citizens through the elimination or reduction of toxic
14 exposures from consumer products; and he brings this action in the public interest pursuant to
15 Health and Safety Code section 25249.7(d).

16 11. Defendant HOBBY LOBBY STORES, INC. ("HOBBY LOBBY") is a person in the
17 course of doing business within the meaning of Health and Safety Code section 25249.11.

18 12. HOBBY LOBBY manufactures, imports, distributes, sells, and/or offers the
19 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
20 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

21 13. Defendants DOES 1-150 manufacture, distribute, sell, and/or offer the PRODUCTS
22 for sale in the State of California. DOES 1-150 are each a person in the course of doing business
23 within the meaning of Health and Safety Code section 25249.11(b). At this time, the true names
24 and capacities of DOES 1 through 150 are unknown to Plaintiff, who, therefore, sues each
25 defendant by its fictitious name pursuant to Code of Civil Procedure section 474. Plaintiff is
26 informed and believes, and on that basis alleges, that each of the fictitiously named defendants is
27 responsible for the acts and occurrences alleged herein. When ascertained, their true names and
28 capacities shall be reflected in an amended pleading.

1 reproductive toxicity without first giving clear and reasonable warning to such individual”
2 Health & Safety Code § 25249.6.

3 21. On December 20, 2012, Plaintiff’s sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to HOBBY LOBBY and certain public enforcement
5 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
6 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
7 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without
8 the individual purchasers and users first having been provided with a “clear and reasonable
9 warning” regarding such toxic exposures, as required by Proposition 65.

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

15 23. After receiving Plaintiff’s sixty-day notice of violation, the appropriate public
16 enforcement agencies have failed to commence and diligently prosecute a cause of action against
17 DEFENDANTS under Proposition 65.

18 24. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or
19 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a
20 “clear and reasonable” warning under Proposition 65.

21 25. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
22 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

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

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

1 28. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of
2 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
3 ingestion.

4 29. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
5 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
6 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for
7 sale or use to individuals in the State of California.

8 30. DEFENDANTS failed to provide a “clear and reasonable warning” to those
9 consumers and other individuals in the State of California who were or who would become exposed
10 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably
11 foreseeable uses of the PRODUCTS.

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

17 32. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
18 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for
19 each violation.

20 33. As a consequence of the above-described acts, Health and Safety Code
21 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
22 DEFENDANTS.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil
4 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

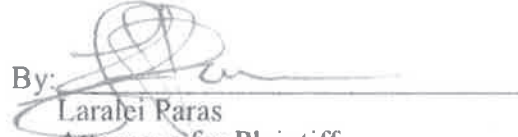
5 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily
6 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
7 PRODUCTS for sale or use in California without first providing a "clear and reasonable warning"
8 as defined by California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

10 3. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and

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

12 Dated: March 19, 2013

13 Respectfully Submitted,
14 THE CHANLER GROUP

15
16 By: 
17 Laralei Paras
18 Attorneys for Plaintiff
19 RUSSELL BRIMER
20
21
22
23
24
25
26
27
28