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ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 07 2013

CLERK OF THE SUPERIOR COURT  
By Kmel Dhillon Deputy

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 JOHN D. BRUSH & CO., INC.; and DOES 1-  
20 150, inclusive,

21 Defendants.  
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Case No. RG13 670145

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

BY FAX

**NATURE OF THE ACTION**

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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 portable  
5 safes with vinyl/PVC cables 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 vinyl/PVC cables of  
8 portable safes manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

10          3.     Detectable levels of DEHP are commonly found in and on vinyl/PVC cables of  
11 portable safes that defendants manufacture, distribute, and offer for sale to consumers throughout  
12 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 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/or offer for sale portable safes  
24 with vinyl/PVC cables containing DEHP without a warning including, but not limited to, the  
25 *SentrySafe Compact Safe, P008E, #401485, #P008EAF0480061604 (#0 49074 02003 3)*. All such  
26 portable safes with vinyl/PVC cables containing DEHP are referred to collectively hereinafter as  
27 “PRODUCTS.”

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7. Defendants' failure to warn consumers and other individuals in the State of California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

### PARTIES

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

11. Defendant JOHN D. BRUSH & CO., INC. ("JOHN D. BRUSH") is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11.

12. JOHN D. BRUSH manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

7 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
8 of California.

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

14 20. JOHN D. BRUSH, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
15 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred  
16 to as “DEFENDANTS.”

17 **VENUE AND JURISDICTION**

18 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
19 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
20 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
21 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
22 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
23 PRODUCTS.

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

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1           23.     The California Superior Court has jurisdiction over DEFENDANTS based on  
2 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
3 association that is a citizen of the State of California, has sufficient minimum contacts in the State  
4 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS'  
5 purposeful availment renders the exercise of personal jurisdiction by California courts consistent  
6 with traditional notions of fair play and substantial justice.

7   **FIRST CAUSE OF ACTION**

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

9           24.     Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
10 Paragraphs 1 through 23, inclusive.

11           25.     In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
12 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed  
13 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

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

18           27.     On or about December 21, 2012, plaintiff's sixty-day notice of violation, together  
19 with the requisite certificate of merit, was provided to JOHN D. BRUSH and certain public  
20 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS  
21 containing the LISTED CHEMICAL, purchasers and users in the State of California were being  
22 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the  
23 PRODUCTS, without the individual purchasers and users first having been provided with a "clear  
24 and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

25           28.     DEFENDANTS have engaged in the manufacture, importation, distribution, sale, and  
26 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6,  
27 and DEFENDANTS' violations have continued to occur beyond their receipt of plaintiff's sixty-day  
28 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and

1 will continue to occur in the future.

2 29. After receiving plaintiff's sixty-day notice of violation, the appropriate public  
3 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
4 DEFENDANTS under Proposition 65.

5 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or  
6 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a  
7 "clear and reasonable" warning under Proposition 65.

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

10 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
11 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during  
12 reasonably foreseeable use.

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

16 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of  
17 the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or  
18 ingestion.

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

23 36. 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 exposed  
25 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably  
26 foreseeable uses of the PRODUCTS.

27 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by  
2 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,  
3 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

7 39. As a consequence of the above-described acts, Health and Safety Code  
8 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
9 DEFENDANTS.


10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

- 12 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil  
13 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily  
15 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the  
16 PRODUCTS for sale or use in California without first providing a “clear and reasonable warning”  
17 as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms  
18 associated with exposures the LISTED CHEMICAL;
- 19 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and  
20 4. That the Court grant such other and further relief as may be just and proper.

21 Dated: March 6, 2013

22 Respectfully Submitted,  
23 THE CHANLER GROUP

24 By:   
25 Laralei S. Paras  
26 Attorneys for Plaintiff  
27 RUSSELL BRIMER  
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