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ENDORSED  
FILED  
San Francisco County Superior Court

MAR 11 2013

CLERK OF THE COURT

BY: DENNIS TOYAMA  
Deputy Clerk

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION  
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 JACK RICHESON & COMPANY, INC.;;  
20 and DOES 1-150, inclusive,

21 Defendants.  
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Case No. CGC-13-529402

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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 the vinyl/PVC components of art supply pouches sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about the risks of exposures to DEHP present in and on the vinyl/PVC  
8 components of art supply pouches manufactured, distributed, and/or offered for sale or use to  
9 consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on the vinyl/PVC components  
11 of art supply pouches that defendants manufacture, distribute, and/or offer for sale to consumers  
12 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 § 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. On October 24, 2003, pursuant to Proposition 65, 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., Title 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b).) DEHP is hereinafter referred to as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell art supply pouches with vinyl/PVC  
24 components that contain DEHP, including, but not limited to, the *Deluxe Pottery Tool Set 12*  
25 *Pieces, #210575 (#7 17304 11729 6)*. All such art supply pouches with vinyl/PVC components  
26 containing DEHP are hereinafter collectively referred to as the “PRODUCTS.”  
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1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

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

11 24. Plaintiff realleges and incorporates by reference, as fully as though set forth at  
12 length herein, Paragraphs 1 through 23, inclusive.

13 25. In passing Proposition 65, the citizens of the State of California expressed their  
14 intent through stating in the preamble to the Safe Drinking Water and Toxic Enforcement Act of  
15 1986 that they must be “informed about exposures to chemicals that cause cancer, birth defects,  
16 or other reproductive harm.”

17 26. Proposition 65 mandates that “[n]o person in the course of doing business shall  
18 knowingly and intentionally expose any individual to a chemical known to the state to cause  
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual . . . .” (Health & Safety Code § 25249.6.)

21 27. On or about December 21, 2012, plaintiff’s sixty-day notice of violation, together  
22 with the requisite certificate of merit, was provided to RICHESON and certain public  
23 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
24 containing the LISTED CHEMICAL, purchasers and users in the State of California were being  
25 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable use of the  
26 PRODUCTS, without the individual purchasers and users having first been provided with a  
27 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.  
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1           28. DEFENDANTS have engaged in the manufacture, distribution, sale, and offering  
2 of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and such  
3 violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
4 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,  
5 and will continue to occur in the future.

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

9           30. The PRODUCTS manufactured, distributed, sold, and offered for sale or use in  
10 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
11 allowable State limits, such that they require a "clear and reasonable" warning under  
12 Proposition 65.

13           31. DEFENDANTS knew or should have known that the PRODUCTS they  
14 manufacture, distribute, sell, and/or offer for sale or use in California contain the LISTED  
15 CHEMICAL.

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

18           33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
19 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
20 defined by California Code of Regulations Title 27, § 25602(b).

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

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

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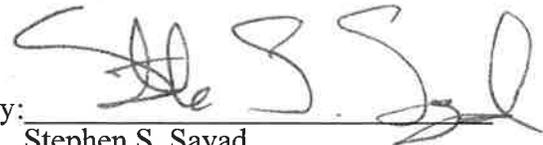


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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 4, 2013

Respectfully Submitted,  
THE CHANLER GROUP



By: \_\_\_\_\_  
Stephen S. Sayad  
Attorneys for Plaintiff  
RUSSELL BRIMER