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**FILED**

**MAR 22 2013**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF MARIN  
11 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 vs.

15 GFTCRAFT, INC. and DOES 1-150,

16 Defendants.

Case No. BV 1301257

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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 Lead and Di(2-ethylhexyl)phthalate ("DEHP"), toxic chemicals found  
5 in and on certain tote bags manufactured, distributed and/or otherwise sold by defendants in  
6 California. This action is also brought to enforce the People's right to be informed of the presence  
7 of DEHP in and on certain manicure cases manufactured, distributed and/or otherwise sold by  
8 defendants in California.

9 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
10 California Health & Safety Code Section 25249.6 *et seq.* ("Proposition 65"), "No person in the  
11 course of doing business shall knowingly and intentionally expose any individual to a chemical  
12 known to the state to cause cancer or reproductive toxicity without first giving clear and  
13 reasonable warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6*)

14 3. On February 27, 1987, the State of California identified and listed Lead as a chemical  
15 known to cause birth defects and other reproductive harm. Lead became subject to the warning  
16 requirement one year later and was therefore subject to the "clear and reasonable warning"  
17 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal. Health &*  
18 *Safety Code § 25249.8.*)

19 4. On October 24, 2003, the State listed DEHP as a chemical known to cause birth  
20 defects and other reproductive harm. DEHP became subject to the warning requirement one year  
21 later and was therefore subject to the "clear and reasonable warning" requirements of Proposition  
22 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

23 5. Where appropriate, DEHP and Lead shall hereinafter be referred to as "LISTED  
24 CHEMICAL."

25 6. The presence of Lead has been detected in and/or on certain of the consumer  
26 accessible components of the Tote bags that defendants manufacture, distribute, and/or offer for  
27 sale to consumers throughout the State of California. An illustrative example of this type of lead-  
28

1 containing tote bag product includes, but is not limited to, the Giftcraft Habitat Collection White  
2 Sage Garden Gift Set, Item #2770066.

3 7. The presence of DEHP has been detected in and/or on certain of the consumer  
4 accessible components of the tote bags that defendants manufacture, distribute, and/or offer for  
5 sale to consumers throughout the State of California. An illustrative example of this type of  
6 DEHP-containing tote bag product includes, but is not limited to, the Giftcraft Brittoe Tote Bag,  
7 Item #331403.

8 8. The presence of DEHP has been detected in and/or on certain of the consumer  
9 accessible components of the manicure cases that defendants manufacture, distribute, and/or offer  
10 for sale to consumers throughout the State of California. An illustrative example of this type of  
11 DEHP-containing manicure case includes, but is not limited to, the Gift Gallery by Giftcraft  
12 Manicure Set w/ Case, Item #466262.

13 9. All such tote bag products containing DEHP and/or Lead, and all such manicure  
14 case products containing DEHP, shall hereinafter be referred to collectively as the "PRODUCTS."

15 10. Defendants' failure to warn consumers and/or other individuals in the State of  
16 California about their exposures to DEHP in conjunction with defendants' sale of the tote bag and  
17 manicure case PRODUCTS is a violation of Proposition 65.

18 11. Defendants' failure to warn consumers and/or other individuals in the State of  
19 California about their exposures to Lead in conjunction with defendants' sale of the tote bag  
20 PRODUCTS is also a violation of Proposition 65.

21 12. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
22 permanent injunctive relief to compel defendants to provide purchasers or users of any and all of  
23 the PRODUCTS with the required warning regarding the health hazards of the LISTED  
24 CHEMICAL content. (*Cal. Health & Safety Code § 25249.7(a).*)

25 13. Plaintiff also seeks civil penalties against defendants for their violations of  
26 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

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1 PARTIES

2 14. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is experienced  
3 in protecting the health of California citizens through the elimination or reduction of toxic  
4 exposures from consumer products, and brings this action in the public interest pursuant to  
5 California Health & Safety Code Section 25249.7.

6 15. Defendant GIFTCRAFT, INC. (hereafter "GIFTCRAFT") is a person doing business  
7 within the meaning of California Health & Safety Code Section 25249.11.

8 16. Defendant GIFTCRAFT manufactures, distributes, and/or offers the PRODUCTS for  
9 sale or use in the State of California or implies by its conduct that it manufactures, distributes,  
10 and/or offers the PRODUCTS for sale or use in the State of California.

11 17. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
12 doing business within the meaning of California Health & Safety Code Section 25249.11.  
13 MANUFACTURER DEFENDANTS engage in the process of research, testing, designing,  
14 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the  
15 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or  
16 more of the PRODUCTS for sale or use in the State of California.

17 18. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing  
18 business within the meaning of California Health & Safety Code Section 25249.11. DISTRIBUTOR  
19 DEFENDANTS distribute, exchange, transfer, process and/or transport one or more of the  
20 PRODUCTS to individuals, businesses or retailers for sale or use in the State of California.

21 19. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
22 business within the meaning of California Health & Safety Code Section 25249.11. RETAIL  
23 DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

24 20. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
25 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
26 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges,  
27 that each of the fictitiously named defendants is responsible for the acts and occurrences herein  
28 alleged. When ascertained, their true names shall be reflected in an amended complaint.



1           27.     Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
2 and intentionally expose any individual to a chemical known to the state to cause cancer or  
3 reproductive toxicity without first giving clear and reasonable warning to such individual . . . .”  
4 Health & Safety Code § 25249.6.

5           28.     On August 1, 2012, a sixty-day notice of violation (“60-Day Notice”), supported by  
6 the requisite Certificate of Merit, was served upon GIFTCRAFT and various public enforcement  
7 agencies stating that as a result of the DEFENDANTS’ sales of the tote bag PRODUCTS,  
8 purchasers and users in the State of California are being exposed to Lead resulting from the  
9 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
10 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

11           29.     On January 4, 2013, a supplemental sixty-day notice of violation (“Supplemental 60-  
12 Day Notice”), supported by the requisite Certificate of Merit, was served upon GIFTCRAFT and  
13 various public enforcement agencies stating that as a result of the DEFENDANTS’ sales of the tote  
14 bag PRODUCTS, purchasers and users in the State of California are being exposed to Lead  
15 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
16 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
17 such toxic exposures and further stating that as a result of the DEFENDANTS’ sales of the tote bag  
18 and manicure case PRODUCTS, purchasers and users in the State of California are being exposed  
19 to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
20 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
21 such toxic exposures.

22           30.     DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
23 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
24 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering  
25 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
26 has continued to occur beyond GIFTCRAFT’s receipt of plaintiff’s 60-Day Notice and  
27 Supplemental 60-Day Notice. Plaintiff further alleges and believes that such violations are  
28 reasonably likely to occur into the future absent express injunctive relief.

1           31.    After receipt of the claims asserted in the 60-Day Notice and Supplemental 60-Day  
2 Notice, the appropriate public enforcement agencies have failed to commence and diligently  
3 prosecute a cause of action against DEFENDANTS under Proposition 65.

4           32.    The tote bag PRODUCTS manufactured, distributed, and/or offered for sale or use  
5 in California by DEFENDANTS, contain Lead.

6           33.    The tote bag and manicure case PRODUCTS manufactured, distributed, and/or  
7 offered for sale or use in California by DEFENDANTS, contain DEHP.

8           34.    DEFENDANTS knew or should have known that the tote bag PRODUCTS contained  
9 Lead and DEHP and knew or should have known that the manicure case PRODUCTS contained  
10 DEHP.

11          35.    Lead and DEHP is present in or on each of the tote bag PRODUCTS in such a way as  
12 to expose (as such exposure is defined by 27 CCR Section 25602(b)) individuals to the Lead and  
13 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the  
14 PRODUCTS.

15          36.    DEHP is present in or on the manicure case PRODUCTS in such a way as to expose  
16 (as such exposure is defined by 27 CCR Section 25602(b)) individuals to the DEHP through dermal  
17 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

18          37.    DEFENDANTS knew or should have known that the reasonably foreseeable use of  
19 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or  
20 ingestion.

21          38.    DEFENDANTS' participation in the manufacture, distribution and/or offer for sale  
22 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

23          39.    DEFENDANTS failed to provide a "clear and reasonable warning" to those  
24 consumers and/or other individuals in the State of California who were or who could become  
25 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

26          40.    Contrary to the express policy and statutory prohibition of Proposition 65,  
27 individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion  
28 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without

1 a "clear and reasonable warning", have suffered, and continue to suffer, irreparable harm, for  
2 which harm they have no other plain, speedy or adequate remedy at law.

3 41. As a consequence of the above-described acts, DEFENDANTS are liable for a  
4 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to  
5 California Health & Safety Code Section 25249.7(b).

6 42. As a consequence of the above-described acts, California Health & Safety Code  
7 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
11 follows:

12 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),  
13 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
14 alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),  
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
17 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
18 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the  
19 LISTED CHEMICAL;

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

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

22 Dated: March 21, 2013

Respectfully submitted,

23 THE CHANLER GROUP

24  
25 By: 

26 Gregory M. Sheffer  
27 Attorneys for Plaintiff  
28 RUSSELL BRIMER