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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SANTA CLARA  
11 UNLIMITED CIVIL JURISDICTION  
12

13 RUSSELL BRIMER,  
14 Plaintiff,  
15 v.

16 MAFCOTE, INC.; ROYAL CONSUMER  
17 PRODUCTS, LLC; and DOES 1-150,  
inclusive,  
18 Defendants.

Case No. **16CV294141**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

ENCLOSURE

2016 APR 20 10 3:27

Date: April 20, 2016  
By: J. CAO-NGUYEN

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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical  
5 that is found in vinyl/PVC poster carriers that are sold in California.

6 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to  
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code  
8 section 6300 et seq., who purchase, use or handle Defendants’ products, about the risks of  
9 exposure to DEHP found in vinyl/PVC poster carriers manufactured, distributed, and offered for  
10 sale or use throughout the State of California. Individuals not covered by California’s  
11 Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle  
12 Defendants’ products, are referred to hereinafter as “CONSUMERS.”

13 3. Detectable levels of DEHP are found in and on the vinyl/PVC poster carriers that  
14 Defendants manufacture, distribute, and offer for sale to CONSUMERS throughout the State of  
15 California.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
17 Health and Safety Code section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of  
18 doing business shall knowingly and intentionally expose any individual to a chemical known to  
19 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
20 warning to such individual . . .” Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
22 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became  
23 subject to the “clear and reasonable warning” requirements of the act one year later on October  
24 24, 2004. Cal. Code Regs. tit. 27 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
26 hazard warnings in California, vinyl/PVC poster carriers that contain DEHP including, but not  
27 limited to the *RoyalBrites Poster Carrier, Item #26808, UPC #0 71064 26808 8*. All such

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1 vinyl/PVC poster carriers containing DEHP are referred to collectively hereinafter as  
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health  
4 hazards associated with exposures to DEHP in conjunction with Defendants’ sales of the  
5 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
6 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
7 § 25249.7(a) & (b)(1).

8 8. For Defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with  
10 the required warning regarding the health hazards associated with exposures to DEHP. Health  
11 & Safety Code § 25249.7(a).

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

14 **PARTIES**

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

19 11. Defendant MAFCOTE, INC. (“MAFCOTE”) is a person in the course of doing  
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

21 12. MAFCOTE manufactures, imports, distributes, sells, and/or offers the  
22 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
23 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
24 State of California.

25 13. Defendant ROYAL CONSUMER PRODUCTS, LLC (“ROYAL”) is a person in  
26 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
27 and 25249.11.

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1           14. ROYAL manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
2 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
5 person in the course of doing business within the meaning of Health and Safety Code sections  
6 25249.6 and 25249.11.

7           16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
8 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,  
9 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for  
10 sale or use in California.

11           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
13 and 25249.11.

14           18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
15 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
16 retailers for sale or use in the State of California, or each implies by its conduct that it  
17 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to  
18 individuals, businesses, or retailers for sale or use in the State of California.

19           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
21 and 25249.11.

22           20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
23 individuals in the State of California.

24           21. 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 names pursuant to  
26 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
27 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
28 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.



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

5           29.    On January 29, 2016, Plaintiff served a sixty-day notice of violation, together  
6 with the accompanying certificate of merit, on DEFENDANTS, the California Attorney  
7 General, and all other requisite public enforcers alleging that, as a result of DEFENDANTS’  
8 sales of the PRODUCTS, consumers in the State of California are being exposed to DEHP  
9 resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first  
10 receiving a “clear and reasonable warning” regarding the harms associated with exposures to  
11 DEHP, as required by Proposition 65.

12           30.    DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
13 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
14 violations have continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As  
15 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined  
16 will continue in the future.

17           31.    After receiving Plaintiff’s sixty-day notice of violation, no public enforcement  
18 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
19 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of  
20 violation.

21           32.    The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
22 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
23 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
24 consumers in California are not exempt from the “clear and reasonable” warning requirements  
25 of Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS’ violations of  
26 Proposition 65 as a result of their failure to provide warnings to consumers exposed to DEHP  
27 from the PRODUCTS, have continued since as far back as January 29, 2013.

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1           33. DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

3           34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
4 through dermal contact and/or ingestion during reasonably foreseeable use.

5           35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
6 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
7 of Regulations, section 25602(b).

8           36. DEFENDANTS know that the normal and reasonably foreseeable use of the  
9 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

10          37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
11 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
12 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
13 consumers in California.

14          38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
15 consumers in California who have been, or who will be, exposed to DEHP through dermal  
16 contact and/or ingestion resulting from their use of the PRODUCTS.

17          39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
18 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
19 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear  
20 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
21 for which they have no plain, speedy, or adequate remedy at law.

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

25          41. As a consequence of the above-described acts, Health and Safety Code  
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
27 DEFENDANTS.

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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  
4 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
5 each violation;

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California without first providing a “clear and  
9 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;


11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
13 currently in the chain of commerce in California without a “clear and reasonable warning” as  
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

15 4. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

16 5. That the Court grant such other and further relief as may be just and proper.

17  
18 Dated: April 19, 2016

Respectfully submitted,  
THE CHANLER GROUP

19  
20 By:   
21 Warren M. Klein  
22 Attorneys for Plaintiff  
23 RUSSELL BRIMER  
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