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ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 20 2016

CLERK OF THE SUPERIOR COURT  
By   
JAMIE THOMAS, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 DUNDAS JAFINE INC.; and DOES 1-150,  
18 inclusive,

19 Defendants.

20 Case No. RG16831822

21 **COMPLAINT FOR CIVIL PENALTIES  
22 AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

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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 coated cables 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 present in and on the vinyl/PVC coated cables manufactured, distributed,  
10 and offered for sale or use throughout the State of California. Individuals not covered by  
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,  
12 use or handle Defendants’ products, are referred to hereinafter as “CONSUMERS”.

13           3.     Detectable levels of DEHP are commonly found in and on components of  
14 vinyl/PVC coated cables that Defendants import, manufacture, distribute, ship, sell and/or offer  
15 for sale to CONSUMERS throughout the State of 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.     On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
22 chemical that is known to cause birth defects or other 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 &  
25 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

26           6.     Defendants manufacture, distribute, import, sell, and offer for sale without  
27 warning in California, vinyl/PVC coated cables containing the LISTED CHEMICAL, including,  
28 but not limited to, *ProClean Dryer Lint Removal Kit BPCCK, UPC #0 60672 15001 4*. All such

1 vinyl/PVC coated cables containing the LISTED CHEMICAL are referred to collectively  
2 hereinafter as the "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in California of the  
4 harms associated with exposures to the LISTED CHEMICAL in conjunction with Defendants'  
5 sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of  
6 Proposition 65, and subject Defendants to enjoinder of such conduct, as well as civil penalties  
7 for each violation. Health & Safety Code § 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 purchasers or users of the  
10 PRODUCTS with the required warning regarding the health hazards associated with exposures  
11 to the LISTED CHEMICAL. Health & 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, and each of them, for each violation 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 harmful exposures to toxic chemicals from consumer products. He brings this action in the  
18 public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant DUNDAS JAFINE INC. ("DUNDAS") is a person in the course of  
20 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

24 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
25 person in the course of doing business within the meaning of Health and Safety Code sections  
26 25249.6 and 25249.11.

27 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
28 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,

1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
5 and 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
8 in the State of California.

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

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

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

19 20. DUNDAS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
20 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as  
21 “DEFENDANTS.”

### 22 VENUE AND JURISDICTION

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



1 PRODUCTS, without the individual purchasers and users first having received a “clear and  
2 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
6 Plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
7 continuous in nature, and will continue to occur in the future.

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

11 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
12 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
13 reasonably foreseeable uses of these products result in exposures that require a “clear and  
14 reasonable” warning under Proposition 65.

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

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

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

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

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

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and other individuals in California not covered by California’s Occupational Safety  
5 Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to the LISTED  
6 CHEMICAL.

7 37. Contrary to the express policy and statutory prohibitions of Proposition 65  
8 enacted directly by California voters, consumers, and other individuals exposed to the LISTED  
9 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable  
10 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”  
11 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
12 adequate remedy at law.

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

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

19 **PRAYER FOR RELIEF**

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

- 21 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
22 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
23 each violation;
- 24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
26 offering the PRODUCTS for sale or use in California without first providing a “clear and  
27 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
28 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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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: September 13, 2016

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Warren M. Klein  
Attorneys for Plaintiff  
RUSSELL BRIMER