

ENDORSED  
FILED  
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
Plaintiff,

v.

TEST-RITE PRODUCTS CORP.;  
and DOES 1-150, inclusive,  
Defendants.

Case No. RG10543922

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

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

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1           7.     On October 24, 2003, California identified and listed DEHP as a chemical known  
2 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and  
3 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit. 27  
4 Cal. Code Regs. (“CCR”) § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

5           8.     Lead and DEHP shall hereinafter be collectively referred to as the “LISTED  
6 CHEMICALS.”

7           9.     Defendants manufacture, distribute, and/or sell:

8               a.     Trolley jack handles with grips containing excessive levels of lead  
9 including, but not limited to, the *GM Performance Parts 2 Ton Hydraulic Trolley Jack*,  
10 *GM7002 (#7 00305 67002 0)*; and

11              b.     Tools with grips containing excessive levels of lead and DEHP including  
12 but not limited to, the *UltraSteel 34 piece 1/4” Drive Ratchet, Bit And Socket Set, TS02265J*  
13 *(#0 47669 02265 3)*.

14           10.    All such trolley jack handles with grips and tools with grips containing either or  
15 both of the LISTED CHEMICALS shall hereinafter be referred to as the “PRODUCTS.”

16           11.    Defendants’ failures to warn consumers and/or other individuals in the state of  
17 California not covered by California’s Occupational Safety Health Act, Labor Code section 6300  
18 *et seq.* about their exposures to the LISTED CHEMICALS and their potential to cause birth  
19 defects and other reproductive harm in conjunction with Defendants’ sales of the PRODUCTS is  
20 a violation of Proposition 65 and subjects defendants to enjoinder of such conduct as well as  
21 civil penalties for each such violation.

22           12.    As a result of defendants’ violations of Proposition 65, plaintiff seeks preliminary  
23 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of  
24 the PRODUCTS with the required warning regarding the health hazards of the LISTED  
25 CHEMICALS. (Health & Safety Code § 25249.7(a).)

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

**PARTIES**

14. Plaintiff RUSSELL BRIMER is a citizen of the County of Alameda in 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 brings this action in the public interest pursuant to California Health & Safety Code Section 25249.7.

15. Defendant TEST-RITE PRODUCTS CORP. ("TEST-RITE") is a person doing business within the meaning of California Health & Safety Code Section 25249.11.

16. Defendant TEST-RITE manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

18. MANUFACTURER DEFENDANTS engage in the process of researching, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the process of researching, testing, designing, assembling, fabricating, and/or manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

19. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons in the course of doing business within the meaning of Health & Safety Code Section 25249.11.

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

21. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in the course of doing business within the meaning of Health & Safety Code Section 25249.11.

22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the state of California.

23. At this time, the true names of Defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to

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

4 24. TEST-RITE, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
6 referred to hereinafter as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 25. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
9 Procedure sections 394, 395, & 395.5, because this Court is a court of competent jurisdiction,  
10 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
11 County of Alameda and/or because DEFENDANTS conducted, and continue to conduct,  
12 business in this County with respect to the PRODUCTS.

13 26. The California Superior Court has jurisdiction over this action pursuant to  
14 California Constitution Article VI, Section 10, which grants the Superior Court "original  
15 jurisdiction in all causes except those given by statute to other trial courts." The statute under  
16 which this action is brought does not specify any other basis of subject matter jurisdiction.

17 27. The California Superior Court has jurisdiction over DEFENDANTS based on  
18 plaintiff's information and good faith belief that each defendant is a person, firm, corporation, or  
19 association that either are citizens of the state of California, have sufficient minimum contacts in  
20 the state of California, or otherwise purposefully avail themselves of the California market.  
21 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
22 courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

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

25 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
26 Paragraphs 1 through 27, inclusive.

1           29. The citizens of the State of California have expressly stated in the Safe Drinking  
2 Water and Toxic Enforcement Act of 1986, that they must be informed “about exposures to  
3 chemicals that cause cancer, birth defects and other reproductive harm.” (Health & Safety Code  
4 § 25249.6.)

5           30. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
6 and intentionally expose any individual to a chemical known to the state to cause cancer or  
7 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
8 (*Id.*)

9           31. On or about June 17, 2010, a sixty-day notice of violation, together with the  
10 requisite certificate of merit, was provided to TEST-RITE and various public enforcement  
11 agencies stating that as a result of the DEFENDANTS’ sales of trolley jack handles with grips,  
12 purchasers and users in the State of California are being exposed to lead resulting from the  
13 reasonably foreseeable uses of the trolley jack handles with grips, without the individual  
14 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
15 such toxic exposures.

16           32. On or about January 19, 2012, a supplemental sixty-day notice of violation,  
17 together with the requisite certificate of merit, was provided to TEST-RITE, Sears Roebuck and  
18 Co., Sears Holding Corporation, O’Reilly Automotive, Inc., and various public enforcement  
19 agencies, realleging the allegations set forth in the June 17, 2010 sixty-day notice, and stating  
20 that as a result of the DEFENDANTS’ sales of tools with grips, purchasers and users in the State  
21 of California are being exposed to lead and/or DEHP resulting from the reasonably foreseeable  
22 uses of the tools with grips, without the individual purchasers and users first having been  
23 provided with a “clear and reasonable warning” regarding such toxic exposures.

24           33. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
25 the PRODUCTS for sale or use in violation of Health & Safety Code section 25249.6 and  
26 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use in  
27 violation of Health & Safety Code section 25249.6 has continued to occur beyond  
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1 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges and  
2 believes that such violations will continue to occur into the future.

3 34. After receipt of the claims asserted in the sixty-day notices of violation, the  
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
5 cause of action against DEFENDANTS under Proposition 65.

6 35. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
7 California by DEFENDANTS contained one or both of the LISTED CHEMICALS above the  
8 allowable state limits.

9 36. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
10 distributed, and/or offered for sale or use by DEFENDANTS in California contained one or both  
11 of the LISTED CHEMICALS.

12 37. One or both of the LISTED CHEMICALS were present in or on the PRODUCTS  
13 in such a way as to expose individuals to one or both of the LISTED CHEMICALS through  
14 dermal contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

15 38. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
16 continues to cause consumer exposures to one or both of the LISTED CHEMICALS, as such  
17 exposure is defined by 27 CCR section 25602(b).

18 39. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
19 the PRODUCTS would expose individuals to one or both of the LISTED CHEMICALS through  
20 dermal contact and/or ingestion.

21 40. DEFENDANTS intended that such exposures to one or both of the LISTED  
22 CHEMICALS from the reasonably foreseeable use of the PRODUCTS would occur by their  
23 deliberate, non-accidental participation in the manufacture, distribution, and/or offering for sale  
24 or use of PRODUCTS to individuals in the state of California.

25 41. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
26 consumers and/or other individuals in the state of California who were or who could become  
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1 exposed to one or both of the LISTED CHEMICALS through dermal contact and/or ingestion  
2 during the reasonably foreseeable use of the PRODUCTS.

3 42. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
4 directly by California voters, individuals exposed to one or both of the LISTED CHEMICALS  
5 through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the  
6 PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning," have suffered,  
7 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate  
8 remedy at law.

9 43. As a consequence of the above-described acts, DEFENDANTS are liable for a  
10 maximum civil penalty of \$2,500 per day for each violation pursuant to Health & Safety Code  
11 Section 25249.7(b).

12 44. As a consequence of the above-described acts, Health & Safety Code  
13 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
14 DEFENDANTS.

15 **PRAYER FOR RELIEF**

16 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
17 follows:

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

21 2. That the Court, pursuant to Health & Safety Code section 25249.7(a), preliminarily  
22 and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or offering the  
23 PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as  
24 defined by 27 CCR Section 25601, as to the harms associated with exposures the LISTED  
25 CHEMICALS;

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

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

Dated: May 31, 2012

Respectfully submitted,  
THE CHANLER GROUP

By:   
Stephen S. Sayad  
Attorneys for Plaintiff  
RUSSELL BRIMER