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

11  
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 U.S. TAPE COMPANY, INC.; and DOES 1-  
16 150, inclusive,

Defendants.

Case No. RG 10543473

**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, a toxic chemical found in tape measures with grips sold in  
5 California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about their exposure to lead, present in or on certain tape measures with  
8 grips that defendants manufacture, distribute, and/or offer for sale to consumers throughout the  
9 State of California.

10 3. Elevated levels of lead are commonly found in and on certain tape measures with  
11 grips that defendants manufacture, distribute, and/or offer for sale to consumers and businesses  
12 throughout the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course  
15 of doing business shall knowingly and intentionally expose any individual to a chemical known  
16 to 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 February 27, 1987, the State listed lead as a chemical known to cause birth  
19 defects and other reproductive harm. Lead became subject to the warning requirement one year  
20 later and was therefore subject to the “clear and reasonable warning” requirements of Proposition  
21 65, beginning on February 27, 1988. (*27 Cal. Code Regs. (“C.C.R.”) § 27001(c); Cal. Health &*  
22 *Safety Code § 25249.8.*)

23 6. Lead shall be referred to hereinafter as the “Listed Chemical.”

24 7. Defendants manufacture, distribute, and/or sell tape measures with grips  
25 containing lead, including, but not limited to, the *U.S. Tape Center Point 25’ Measuring Tape*  
26 *(#7 27659 50070 4)*. All such tape measures with grips containing lead shall hereinafter be  
27 collectively referred to as the “Products.”  
28





1 Defendants' purposeful availment renders the exercise of personal jurisdiction by California  
2 courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

5 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
6 Paragraphs 1 through 24, inclusive.

7 26. The citizens of the State of California have expressly stated in Proposition 65 that  
8 they must be informed "about exposures to chemicals that cause cancer, birth defects or other  
9 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

10 27. Proposition 65 states, "No person in the course of doing business shall knowingly  
11 and intentionally expose any individual to a chemical known to the state to cause cancer or  
12 reproductive toxicity without first giving clear and reasonable warning to such individual...."  
13 (*Ibid.*)

14 28. On August 5, 2010, a sixty-day notice of violation, together with the requisite  
15 certificate of merit, was provided to U.S. Tape and various public enforcement agencies stating  
16 that, as a result of the defendant's sales of the Products, purchasers and users in the State of  
17 California were being exposed to the Listed Chemical resulting from the reasonably foreseeable  
18 uses of the Products, without the individual purchasers and users first having been provided  
19 with a "clear and reasonable warning" regarding such toxic exposures.

20 29. Defendants have engaged in the manufacture, distribution, and/or offering of the  
21 Products for sale or use in violation of California Health & Safety Code § 25249.6 and  
22 Defendants' manufacture, distribution, and/or offering of the Products for sale or use in  
23 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
24 Defendants' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
25 believes that such violations will continue to occur into the future.

26 30. After receipt of the claims asserted in the sixty-day notice of violation, the  
27 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
28 cause of action against Defendants under Proposition 65.

1           31. The Products manufactured, distributed, and/or offered for sale or use in  
2 California by Defendants contained the Listed Chemical above the allowable state limits.

3           32. Defendants knew or should have known that the Products manufactured,  
4 distributed, and/or offered for sale or use by Defendants in California contained the Listed  
5 Chemical.

6           33. The Listed Chemical was present in or on the Products in such a way as to expose  
7 individuals to the Listed Chemical through dermal contact and/or ingestion during the  
8 reasonably foreseeable use of the Products.

9           34. The normal and reasonably foreseeable use of the Products has caused and  
10 continues to cause consumer and occupational exposures to the Listed Chemical, as such  
11 exposure is defined by 27 C.C.R. § 25602(b).

12           35. Defendants had knowledge that the normal and reasonably foreseeable use of the  
13 Products would expose individuals to the Listed Chemical through dermal contact and/or  
14 ingestion.

15           36. Defendants intended that such exposures to the Listed Chemical from the  
16 reasonably foreseeable use of the Products would occur by their deliberate, non-accidental  
17 participation in the manufacture, distribution, and/or offering of the Products for sale or use to  
18 individuals in the State of California.

19           37. Defendants failed to provide a “clear and reasonable warning” to those consumers  
20 and/or other individuals in the State of California who were or who could become exposed to  
21 the Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable  
22 use of the Products.

23           38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
24 directly by California voters, individuals exposed to the Listed Chemical through dermal contact  
25 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by  
26 Defendants without a “clear and reasonable warning,” have suffered, and continue to suffer,  
27 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.  
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