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**FILED**  
**NOV 16 2011**  
KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Bond, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 SERVICE TOOL COMPANY, L.L.C.; ALCO  
19 MANUFACTURING CO.; and DOES 1-150,  
20 inclusive,

21 Defendants.

22 Case No. CW 1105661

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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BY FAX

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 of the presence of lead, a toxic chemical found in tape measures with hand  
5 straps sold in California.

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

10          3.     High levels of lead are commonly found in and on the tape measures with hand  
11 straps that defendants manufacture, distribute, and/or offer for sale to consumers throughout the  
12 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”), “[n]o person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and  
17 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

18          5.     On February 27, 1987, California identified and listed lead as a chemical known  
19 to cause birth defects and other reproductive harm. Lead became subject to the warning  
20 requirement one year later and was therefore subject to the “clear and reasonable warning”  
21 requirements of Proposition 65, beginning on February 27, 1988. (27 CCR § 27001 (c); Cal.  
22 Health & Safety Code § 25249.8.)

23          6.     Defendants manufacture, distribute, and/or offer sale of tape measures with hand  
24 straps containing excessive levels of lead including, but not limited to, *Tool Cache 16' x 3/4"*  
25 *Tape with Scriber, #51111 (#0 42374 30506 0)*. All such tape measures with hand straps  
26 containing lead shall hereinafter be referred to as the “PRODUCTS.”

27          7.     Defendants’ failure to warn consumers and/or other individuals in the state of  
28 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*

1 *seq.* about their exposure to lead and its potential to cause birth defects and other reproductive  
2 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of  
3 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such  
4 conduct as well as civil penalties for each such violation.

5 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
6 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
7 PRODUCTS with the required warning regarding the health hazards of lead. (Cal. Health &  
8 Safety Code § 25249.7(a).)

9 9. Plaintiff also seeks civil penalties against defendants for their violations of  
10 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

11 **PARTIES**

12 10. Plaintiff, RUSSELL BRIMER, is a citizen of the state of California who is  
13 dedicated to protecting the health of California citizens through the elimination or reduction of  
14 toxic exposures from consumer products; he brings this action in the public interest pursuant to  
15 California Health & Safety Code § 25249.7(d).

16 11. Defendant SERVICE TOOL COMPANY, L.L.C. ("SERVICE TOOL") is a  
17 person in the course of doing business within the meaning of California Health & Safety Code §  
18 25249.11.

19 12. Defendant SERVICE TOOL, manufactures, distributes, and/or offers the  
20 PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
21 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of  
22 California.

23 13. Defendant ALCO MANUFACTURING CO. ("ALCO") is a person in the course  
24 of doing business within the meaning of California Health & Safety Code § 25249.11.

25 14. Defendant ALCO manufactures, distributes, and/or offers the PRODUCTS for  
26 sale or use in the state of California, or implies by its conduct that it manufactures, distributes,  
27 and/or offers the PRODUCTS for sale or use in the state of California.

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1           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
2 persons in the course of doing business within the meaning of California Health & Safety Code  
3 § 25249.11.

4           16. MANUFACTURER DEFENDANTS engage in the process of researching,  
5 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
6 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
7 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

8           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
9 in the course of doing business within the meaning of California Health & Safety Code §  
10 25249.11.

11           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
13 in the state of California.

14           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
15 the course of doing business within the meaning of California Health & Safety Code §  
16 25249.11.

17           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
18 state of California.

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

24           22. SERVICE TOOL, ALCO, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
26 referred to as “DEFENDANTS.”

1 **VENUE AND JURISDICTION**

2 23. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
3 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because  
4 one or more instances of wrongful conduct occurred, and continue to occur, in the County of  
5 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
6 County with respect to the PRODUCTS.

7 24. The California Superior Court has jurisdiction over this action pursuant to  
8 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
9 in all causes except those given by statute to other trial courts.” The statute under which this  
10 action is brought does not specify any other basis of subject matter jurisdiction.

11 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,  
13 or association that is a citizen of the state of California, has sufficient minimum contacts in the  
14 state of California, or otherwise purposefully avails itself of the California market.  
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
16 California courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

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

21 27. The citizens of the state of California have expressly stated in the Safe Drinking  
22 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
23 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
24 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

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

1           29. On or about September 1, 2011, a sixty-day notice of violation, together with the  
2 requisite certificate of merit, was provided to SERVICE TOOL, ALCO and various public  
3 enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS,  
4 purchasers and users in the state of California were being exposed to lead resulting from the  
5 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
6 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

7           30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
8 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and  
9 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
10 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
11 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
12 believes that such violations will continue to occur into the future.

13           31. After receipt of the claims asserted in the sixty-day notice of violation, the  
14 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
15 cause of action against DEFENDANTS under Proposition 65.

16           32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
17 California by DEFENDANTS contained lead in an amount above the allowable state limits.

18           33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
19 distributed, and/or offered for sale or use in California contained lead.

20           34. Lead was present in or on the PRODUCTS in such a way as to expose individuals  
21 to lead through dermal contact and/or ingestion during the reasonably foreseeable use of the  
22 PRODUCTS.

23           35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
24 continues to cause, consumer exposures to lead, as such exposure is defined by Title 27 CCR §  
25 25602(b).

26           36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
27 the PRODUCTS would expose individuals to lead through dermal contact and/or ingestion.  
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1 37. DEFENDANTS intended that such exposures to lead from the reasonably  
2 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
3 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to  
4 individuals in the state of California.

5 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
6 consumers and/or other individuals in the state of California who were, or who could become  
7 exposed to lead through dermal contact and/or ingestion during the reasonably foreseeable use  
8 of the PRODUCTS.

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

14 40. As a consequence of the above-described acts, DEFENDANTS are liable for a  
15 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
16 Safety Code § 25249.7(b).

17 41. As a consequence of the above-described acts, California Health & Safety Code  
18 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
19 DEFENDANTS.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

25 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
26 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or  
27 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
28 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposure to lead;

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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: November   , 2011

Respectfully Submitted,  
THE CHANLER GROUP

By: \_\_\_\_\_  
Christopher M. Martin  
Attorneys for Plaintiff  
RUSSELL BRIMER