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ENDORSED
FILED
ALAMEDA COUNTY

SEP 06 2012
CLERK OF THE SUPERIOR COURT
Anita Dhir

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

11
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 W. W. GRAINGER, INC.; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. _

RG12646649

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(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 of the presence of presence of toxic chemicals, including lead and di(2-
5 ethylhexyl)phthalate (“DEHP”), found in the grips of tools sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive harms associated with their exposure to lead and
8 DEHP (collectively, the “Listed Chemicals”) present in or on the grips of certain tools that
9 defendants manufacture, import, distribute, and/or offer for sale to consumers throughout the
10 state of California.

11 3. High levels of either or both of the Listed Chemicals are commonly found in and
12 on the grips of tools that defendants manufacture, distribute, and/or offer for sale to consumers
13 throughout the state of California (“Tools”).

14 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, Cal.
15 Health & Safety Code § 25249.6 *et seq.* (2012) (“Proposition 65”), “[n]o person in the course of
16 doing business shall knowingly and intentionally expose any individual to a chemical known to
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual ...” Health & Safety § 25249.6.

19 5. On February 27, 1987, California identified and listed lead as a chemical known
20 to cause birth defects and other reproductive harm. Lead became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on on February 27, 1988.
22 Cal. Code Regs. tit. 27, § 27001(c) (2012); Health & Safety §§ 25249.8 & 25249.10(b).

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

1 without the individual purchasers and users first having received a “clear and reasonable
2 warning” regarding such toxic exposures.

3 29. Defendants have engaged in the manufacture, distribution, and/or offering of
4 Tools containing either or both of the Listed Chemicals for sale or use in violation of Health and
5 Safety Code section 25249.6, and Defendants’ manufacture, distribution, and/or offering of
6 Tools containing one or both of the Listed Chemicals for sale or use in violation of Health &
7 Safety Code section 25249.6 has continued to occur beyond Defendants’ receipt of Plaintiff’s
8 sixty-day notice of violation. Plaintiff further alleges and believes that such violations are
9 ongoing and will continue to occur into the future.

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

13 31. The Tools manufactured, distributed, and/or offered for sale or use in California
14 by Defendants contain either or both of the Listed Chemicals in an amount above the allowable
15 state limits.

16 32. Defendants knew or should have known that the Tools manufactured, distributed,
17 and/or offered for sale or use in California contain either or both of the Listed Chemicals.

18 33. Defendants knew or should have known that the Tools manufactured, distributed,
19 and/or offered for sale or use in California contain either or both of the Listed Chemicals.

20 34. Either or both of the Listed Chemicals are present in or on the Tools in such a
21 way as to expose individuals to either or both of the Listed Chemicals through dermal contact
22 and/or ingestion during the reasonably foreseeable use of the Tools.

23 35. The normal and reasonably foreseeable use of the Tools has caused, and continues
24 to cause, consumer exposures to either or both of the Listed Chemicals, as such exposure is
25 defined by California Code of Regulations title 27, section 25602(b).

26 36. Defendants had knowledge that the normal and reasonably foreseeable use of the
27 Tools exposes individuals to either or both of the Listed Chemicals through dermal contact
28 and/or ingestion.

1 Regulations title 27, section 25601 as to the harms associated with exposure to the Listed
2 Chemicals;

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

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

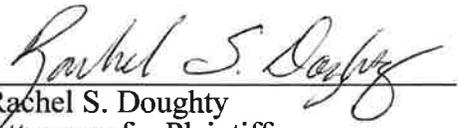
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6 Dated: September 5, 2012

Respectfully Submitted,
THE CHANLER GROUP

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By: 
Rachel S. Doughty
Attorneys for Plaintiff
RUSSELL BRIMER

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