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ENDORSED
FILED
ALAMEDA COUNTY

AUG 23 2012

CLERK OF THE SUPERIOR COURT
By Donnan Pharr
Deputy

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

RUSSELL BRIMER,

Plaintiff,

v.

ROBERT BOSCH TOOL CORPORATION;
and DOES 1-150, inclusive,

Defendants.

Case No. **HG12644840**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

1 NATURE OF THE ACTION

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 measuring wheels sold in
5 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 measuring wheels that defendants manufacture, import, distribute,
9 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 measuring wheels that
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
12 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 measuring wheels
24 containing excessive levels of lead including, but not limited to, *Measure Master by Rolatape,*
25 *MM-12 Series, 32-12RP (#0 95041 09880 2).* All such measuring wheels containing lead shall
26 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 ROBERT BOSCH TOOL CORPORATION ("ROBERT BOSCH") is
17 a person in the course of doing business within the meaning of California Health & Safety Code
18 § 25249.11.

19 12. Defendant ROBERT BOSCH, 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. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
24 persons in the course of doing business within the meaning of California Health & Safety Code
25 § 25249.11.

26 14. MANUFACTURER DEFENDANTS engage in the process of researching,
27 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
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1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 in the course of doing business within the meaning of California Health & Safety Code §
5 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
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 persons in
10 the course of doing business within the meaning of California Health & Safety Code §
11 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 name pursuant to
16 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
17 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
18 herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. ROBERT BOSCH, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
21 referred to as “DEFENDANTS.”

22 VENUE AND JURISDICTION

23 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
24 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
25 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
26 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
27 County with respect to the PRODUCTS.

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1 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
3 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use
4 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond
5 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
6 believes that such violations will continue to occur into the future.

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

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

12 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
13 distributed, and/or offered for sale or use in California contained lead.

14 32. Lead was present in or on the PRODUCTS in such a way as to expose individuals
15 to lead through dermal contact and/or ingestion during the reasonably foreseeable use of the
16 PRODUCTS.

17 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
18 continues to cause, consumer exposures to lead, as such exposure is defined by Title 27 CCR §
19 25602(b).

20 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
21 the PRODUCTS would expose individuals to lead through dermal contact and/or ingestion.

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

26 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and/or other individuals in the state of California who were, or who could become
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1 exposed to lead through dermal contact and/or ingestion during the reasonably foreseeable use
2 of the PRODUCTS.

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

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

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

14 **PRAYER FOR RELIEF**

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

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

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

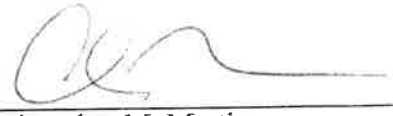
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: August 21, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher M. Martin
Attorneys for Plaintiff
RUSSELL BRIMER