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ENDORSED  
FILED  
ALAMEDA COUNTY  
SEP 10 2015  
CLERK OF THE SUPERIOR COURT  
By R. De Jesus, Deputy

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

RUSSELL BRIMER

Plaintiff,

v.

LOWE'S COMPANIES, INC.; LOWE'S  
HIW, INC.; L G SOURCING, INC.; and  
DOES 1-150, inclusive,

Defendants.

Case No. **RG 15785253**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

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 health hazards caused by exposures to Di (2-ethylhexyl) phthalate  
5 ("DEHP"), a toxic chemical found in vinyl/PVC electrical tape sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
7 warn individuals not covered by California's Occupational Safety Health Act, Labor Code  
8 section 6300 et seq., who purchase, use or handle defendants' products, about the risks of  
9 exposure to DEHP present in and on vinyl/PVC electrical tape manufactured, distributed, and  
10 offered for sale or use throughout the State of California. Individuals not covered by  
11 California's Occupational Safety Health Act, Labor Code section 6300 et seq. who purchase,  
12 use or handle defendants' products are referred to hereinafter as "consumers".

13 3. Detectable levels of DEHP are found in and on the vinyl/PVC electrical tape that  
14 defendants manufacture, distribute, and offer for sale without a warning to consumers  
15 throughout the State of California.

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

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

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, vinyl/PVC electrical tape containing DEHP including, but not  
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1 limited to, *Utilitech Electrical Tape, Model #54794, LW028001-102013, UPC #8 20909 54794*

2 5. All vinyl/PVC electrical tape containing DEHP are referred to collectively hereinafter as  
3 “PRODUCTS.”

4 7. Defendants’ failure to warn consumers in the State of California of the health  
5 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the  
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
8 § 25249.7(a) & (b)(1).

9 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
10 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with  
11 the required warning regarding the health hazards associated with exposures to DEHP. Health  
12 & Safety Code § 25249.7(a).

13 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
14 penalties against defendants for their violations of Proposition 65.

15 **PARTIES**

16 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is  
17 dedicated to protecting the health of California citizens through the elimination or reduction of  
18 toxic exposures from consumer products; and he brings this action in the public interest  
19 pursuant to Health and Safety Code section 25249.7(d).

20 11. Defendant LOWE’S COMPANIES, INC. (“LOWES”) is a person in the course of  
21 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

22 12. LOWES manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
23 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 13. Defendant LOWE’S HIW, INC. (“HIW”) is a person in the course of doing  
26 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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1           14. HIW manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
2 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           15. Defendant L G SOURCING, INC. (“LG”) is a person in the course of doing  
5 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

6           16. LG manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale  
7 or use in the State of California, or implies by its conduct that it manufactures, imports,  
8 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

9           17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
10 person in the course of doing business within the meaning of Health and Safety Code sections  
11 25249.6 and 25249.11.

12           18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
13 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
14 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
15 California.

16           19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
17 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
18 and 25249.11.

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

22           21. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
23 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
24 and 25249.11.

25           22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
26 State of California.

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

3           29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
4 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
6 harm.”

7           30. Proposition 65 states, “[n]o person in the course of doing business shall  
8 knowingly and intentionally expose any individual to a chemical known to the state to cause  
9 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
10 individual . . . .” Health & Safety Code § 25249.6.

11           31. On March 31, 2015, plaintiff served a sixty-day notice of violation, together with  
12 the requisite certificate of merit, on LOWES, HIW, LG, and certain public enforcement  
13 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
14 DEHP, consumers in the State of California were being exposed to DEHP resulting from their  
15 reasonably foreseeable use of the PRODUCTS, without the consumers first having been  
16 provided with a “clear and reasonable warning” regarding the harms associated with such  
17 exposures, as required by Proposition 65.

18           32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
19 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
20 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
21 DEFENDANTS’ violations are ongoing and continuous in nature and, as such, will continue in  
22 the future.

23           33. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
24 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
25 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
26 violation.

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1           34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
2 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
3 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
4 consumers in California are not exempt from the “clear and reasonable” warning requirements  
5 of Proposition 65, yet DEFENDANTS provide no warning.

6           35. DEFENDANTS knew or should have known that the PRODUCTS they  
7 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.

8           36. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
9 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

10          37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
11 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
12 of Regulations, section 25602(b).

13          38. DEFENDANTS know that the normal and reasonably foreseeable use of the  
14 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

15          39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
16 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
17 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
18 consumers in California.

19          40. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
20 consumers in California who were or who would become exposed to DEHP through dermal  
21 contact and/or ingestion resulting from their use of the PRODUCTS.

22          41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
23 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
24 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear  
25 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
26 for which they have no plain, speedy, or adequate remedy at law.

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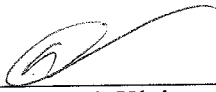




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Dated: September 9, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Warren M. Klein  
Attorneys for Plaintiff  
RUSSELL BRIMER