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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

115CV283508

RUSSELL BRIMER,  
  
Plaintiff,  
  
v.  
ROTARY CORPORATION; and DOES 1-  
150, inclusive,  
  
Defendants.

) Case No. \_\_\_\_\_  
) **COMPLAINT FOR CIVIL PENALTIES**  
) **AND INJUNCTIVE RELIEF**  
) (Health & Safety Code § 25249.5 *et seq.*)

ENDORSED  
FILED  
JUL 24 2015  
C. Page  
CLERK OF SUPERIOR COURT  
DE  
Deputy Clerk

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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 tubing 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 tubing that is 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 tubing 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. On October 24, 2003, California identified and listed DEHP pursuant to  
22 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP  
23 became subject to the "clear and reasonable warning" requirements of the act one year later on  
24 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(b); 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 tubing containing DEHP including, but not limited to,  
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1 the *MaxPower Precision Parts Siphon Pump (Tubing)*, #334275, UPC #8 44547 00623 7. All  
2 vinyl/PVC tubing containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

14 **PARTIES**

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

19 11. Defendant ROTARY CORPORATION (“ROTARY”) is a person in the course of  
20 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

24 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
25 person in the course of doing business within the meaning of Health and Safety Code sections  
26 25249.6 and 25249.11.

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1 wrongful conduct occurred, and continue to occur, in this county, and/or because  
2 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with  
3 respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 23, inclusive.

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

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

26 27. On March 31, 2015, plaintiff served a sixty-day notice of violation, together with  
27 the requisite certificate of merit, on ROTARY and certain public enforcement agencies alleging  
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1 that, as a result of DEFENDANTS' sales of the PRODUCTS containing DEHP, consumers in  
2 the State of California were being exposed to DEHP resulting from their reasonably foreseeable  
3 use of the PRODUCTS, without the consumers first having been provided with a "clear and  
4 reasonable warning" regarding the harms associated with such exposures, as required by  
5 Proposition 65.

6 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
7 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'  
8 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation.  
9 DEFENDANTS' violations are ongoing and continuous in nature and, as such, will continue in  
10 the future.

11 29. After receiving plaintiff's sixty-day notice of violation, no public enforcement  
12 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
13 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of  
14 violation.

15 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
16 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
17 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
18 consumers in California are not exempt from the "clear and reasonable" warning requirements  
19 of Proposition 65, yet DEFENDANTS provide no warning.

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

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

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

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offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et seq.*;

4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

Dated: July 24, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
RUSSELL BRIMER