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10 Attorneys for Plaintiff,  
11 Consumer Advocacy Group, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

14 CONSUMER ADVOCACY GROUP, INC.,  
15 in the public interest,

16 Plaintiff,

17 v.

18 BELDEN, INC., a Delaware Corporation;  
19 THOMAS & BETTS CORPORATION; a  
20 Tennessee Corporation; LOWE'S HOME  
21 CENTERS, INC., a North Carolina  
22 Corporation and DOES 1-20;

23 Defendants.

24 CASE NO. RG16802961

25 COMPLAINT FOR PENALTY AND  
26 INJUNCTION

27 Violation of Proposition 65, the Safe  
28 Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against Defendants BELDEN, INC., THOMAS & BETTS CORPORATION, LOWE'S HOME CENTERS, INC., and DOES 1-20 as follows:

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 05 2016

CLERK OF THE SUPERIOR COURT  
By D. OLIVER

BY FAX

1 as a private attorney general, brings this action in the public interest as defined under  
2 Health and Safety Code section 25249.7, subdivision (d).

3 2. Defendant BELDEN, INC. ("BELDEN") is a Delaware Corporation, doing business in  
4 the State of California at all relevant times herein.

5 3. Defendant THOMAS & BETTS CORPORATION ("T&B") is a Delaware Corporation,  
6 doing business in the State of California at all relevant times herein.

7 4. Defendant LOWE'S HOME CENTERS, INC. ("LOWE'S") is a North Carolina  
8 Corporation, doing business in the State of California at all relevant times herein.

9 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-  
10 20, and therefore sues these defendants by such fictitious names. Plaintiff will amend  
11 this complaint to allege their true names and capacities when ascertained. Plaintiff is  
12 informed, believes, and thereon alleges that each fictitiously named defendant is  
13 responsible in some manner for the occurrences herein alleged and the damages caused  
14 thereby.

15 6. At all times mentioned herein, the term "Defendants" includes BELDEN, T&B,  
16 LOWE'S, and DOES 1-20.

17 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
18 times mentioned herein have conducted business within the State of California.

19 8. Upon information and belief, at all times relevant to this action, each of the Defendants,  
20 including DOES 1-20, was an agent, servant, or employee of each of the other  
21 Defendants. In conducting the activities alleged in this Complaint, each of the  
22 Defendants was acting within the course and scope of this agency, service, or  
23 employment, and was acting with the consent, permission, and authorization of each of  
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
25 were ratified and approved by every other Defendant or their officers or managing  
26 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
27 the alleged wrongful conduct of each of the other Defendants.

1 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
2 Defendants was a person doing business within the meaning of Health and Safety Code  
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
4 employees at all relevant times.

5 **JURISDICTION**

6 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
8 those given by statute to other trial courts. This Court has jurisdiction over this action  
9 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
10 violations of Proposition 65 in any Court of competent jurisdiction.

11 11. This Court has jurisdiction over Defendants named herein because Defendants either  
12 reside or are located in this State or are foreign corporations authorized to do business in  
13 California, are registered with the California Secretary of State, or who do sufficient  
14 business in California, have sufficient minimum contacts with California, or otherwise  
15 intentionally avail themselves of the markets within California through their  
16 manufacture, distribution, promotion, marketing, or sale of their products within  
17 California to render the exercise of jurisdiction by the California courts permissible  
18 under traditional notions of fair play and substantial justice.

19 12. Venue is proper in the County of Alameda because one or more of the instances of  
20 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or  
21 because Defendants conducted, and continue to conduct, business in the County of  
22 Alameda with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 13. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures  
26 to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
2 from contamination, to allow consumers to make informed choices about the products  
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
4 fit.

5 14. Proposition 65 requires the Governor of California to publish a list of chemicals known  
6 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
7 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains  
8 over 700 chemicals and chemical families. Proposition 65 imposes warning  
9 requirements and other controls that apply to Proposition 65-listed chemicals.

10 15. All businesses with ten (10) or more employees that operate or sell products in  
11 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
12 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of  
13 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
14 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
15 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

16 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
17 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
18 25249.7. "Threaten to violate" means "to create a condition in which there is a  
19 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
20 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
21 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

22 17. Plaintiff identified certain practices of manufacturers and distributors of Di Isononyl  
23 Phthalate, also known as diisononyl phthalate (“DINP”)-bearing products of exposing,  
24 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals  
25 of such products without first providing clear and reasonable warnings of such to the  
26 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
27 engaged in such practice.

1 18. On December 20, 2013, the Governor of California added DINP to the list of chemicals  
2 known to the State to cause cancer. Pursuant to Health and Safety Code sections  
3 25249.9 and 25249.10, twenty (20) months after addition of DINP to the list of  
4 chemicals known to the State to cause cancer, DINP became fully subject to Proposition  
5 65 warning requirements and discharge prohibitions.

6 **SATISFACTION OF PRIOR NOTICE**

7 19. On or about May 5, 2015, Plaintiff gave notice of alleged violations of Health and  
8 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
9 private action to BELDEN, T&B and to the California Attorney General, County  
10 District Attorneys, and City Attorneys for each city containing a population of at least  
11 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the  
12 product Installation Tools containing DINP.

13 20. On or about August 5, 2015, Plaintiff gave notice of alleged violations of Health and  
14 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
15 private action to LOWE'S and to the California Attorney General, County District  
16 Attorneys, and City Attorneys for each city containing a population of at least 750,000  
17 people in whose jurisdictions the violations allegedly occurred, concerning the product  
18 Installation Tools containing DINP.

19 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
20 products involved, the likelihood that such products would cause users to suffer  
21 significant exposures to DINP, and the corporate structure of each of the Defendants.

22 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
23 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
24 for Plaintiff who executed the certificate had consulted with at least one person with  
25 relevant and appropriate expertise who reviewed data regarding the exposures to DINP,  
26 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
27 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
28 reasonable and meritorious case for this private action. The attorney for Plaintiff

1 attached to the Certificate of Merit served on the Attorney General the confidential  
2 factual information sufficient to establish the basis of the Certificate of Merit.

3 23. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
4 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
5 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

6 24. Plaintiff is commencing this action more than sixty (60) days from the dates that  
7 Plaintiff gave notices of the alleged violation to BELDEN, T&B, LOWE'S the public  
8 prosecutors referenced in Paragraphs 19 and 20.

9 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
10 any applicable district attorney or city attorney has commenced and is diligently  
11 prosecuting an action against the Defendants.

12 **FIRST CAUSE OF ACTION**

13 **(By CONSUMER ADVOCACY GROUP, INC. and against BELDEN, T&B, LOWE'S and**  
14 **DOES 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
15 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

16 **Installation Tools**

17 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
18 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.  
19 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
20 distributor, promoter, or retailer of Installation Tools, which includes but is not limited  
21 to, "Snap-N-Seal Compression Connector Installation Tool SNSITB-R KB7488 UPC #  
22 8 45671 00352 9" ("INSTALLATION TOOLS").

23 27. INSTALLATION TOOLS contain DINP.

24 28. Defendants knew or should have known that DINP has been identified by the State of  
25 California as a chemical known to cause cancer and reproductive toxicity and therefore  
26 was subject to Proposition 65 warning requirements. Defendants were also informed of  
27 the presence of DINP in INSTALLATION TOOLS within Plaintiff's notice of alleged  
28 violations further discussed above at Paragraphs 19 and 20.

1 29. Plaintiff's allegations regarding INSTALLATION TOOLS concerns "[c]onsumer  
2 products exposure[s]," which "is an exposure that results from a person's acquisition,  
3 purchase, storage, consumption, or other reasonably foreseeable use of a consumer  
4 good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.*  
5 tit. 27, § 25602(b). INSTALLATION TOOLS are consumer products, and, as  
6 mentioned herein, exposures to DINP took place as a result of such normal and  
7 foreseeable use.

8 30. Plaintiff is informed, believes, and thereon alleges that between May 5, 2012 and the  
9 present, each of the Defendants knowingly and intentionally exposed their California  
10 consumers and users of INSTALLATION TOOLS, which Defendants manufactured,  
11 distributed, or sold as mentioned above, to DINP, without first providing any type of  
12 clear and reasonable warning of such to the exposed persons before the time of  
13 exposure. Defendants have distributed and sold INSTALLATION TOOLS in  
14 California. Defendants know and intend that California consumers will use  
15 INSTALLATION TOOLS, thereby exposing them to DINP. Defendants thereby  
16 violated Proposition 65.

17 31. The principal routes of exposure are through dermal contact, and inhalation. Persons  
18 sustain exposures by handling INSTALLATION TOOLS without wearing gloves or any  
19 other personal protective equipment, or by touching bare skin or mucous membranes  
20 with gloves after handling INSTALLATION TOOLS, as well as through direct and  
21 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate  
22 matter dispersed from INSTALLATION TOOLS.

23 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
24 Proposition 65 as to INSTALLATION TOOLS have been ongoing and continuous to the  
25 date of the signing of this complaint, as Defendants engaged and continue to engage in  
26 conduct which violates Health and Safety Code section 25249.6, including the  
27 manufacture, distribution, promotion, and sale of INSTALLATION TOOLS, so that a  
28

1 separate and distinct violation of Proposition 65 occurred each and every time a person  
2 was exposed to DINP by INSTALLATION TOOLS as mentioned herein.

3 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
4 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
5 violations alleged herein will continue to occur into the future.

6 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
7 \$2,500.00 per day per individual exposure to DINP from INSTALLATION TOOLS,  
8 pursuant to Health and Safety Code section 25249.7(b).

9 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
10 filing this Complaint.

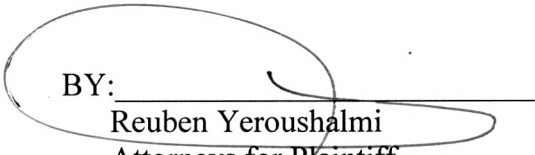
11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

- 13 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 14 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 15 3. Costs of suit;
- 16 4. Reasonable attorney fees and costs; and
- 17 5. Any further relief that the court may deem just and equitable.

18  
19  
20 Dated: February 5, 2016

YEROUSHALMI & YEROUSHALMI

21  
22 BY:   
23 Reuben Yeroushalmi  
24 Attorneys for Plaintiff,  
25 Consumer Advocacy Group, Inc.  
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