

1 Reuben Yeroushalmi (SBN 193981)
 2 Ben Yeroushalmi (SBN 232540)
 3 Peter T. Sato (SBN 238486)
 4 **YEROUSHALMI & YEROUSHALMI**
 5 An Association of Independent Law Corporations
 6 9100 Wilshire Boulevard, Suite 240W
 7 Beverly Hills, California 90212
 8 Telephone: 310.623.1926
 9 Facsimile: 310.623.1930

FILED BY FAX
ALAMEDA COUNTY
 March 16, 2016
 CLERK OF
THE SUPERIOR COURT
 By Burt Moskaira, Deputy
 CASE NUMBER:
RG16802961

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 Limited
 22 Liability Company; HOME DEPOT U.S.A.,
 23 INC., a Delaware Corporation; and DOES 1-
 24 20;

25 Defendants.

CASE NO. RG16802961

FIRST AMENDED COMPLAINT FOR
 PENALTY AND INJUNCTION

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

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

26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
 27 Defendants BELDEN, INC., THOMAS & BETTS CORPORATION, LOWE'S HOME
 28 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

1 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
2 as a private attorney general, brings this action in the public interest as defined under
3 Health and Safety Code section 25249.7, subdivision (d).

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

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

8 4. Defendant LOWE’S HOME CENTERS, INC. (“LOWE’S”) is a North Carolina Limited
9 Liability Company, doing business in the State of California at all relevant times herein.

10 5. Defendant HOME DEPOT U.S.A., INC. (“HOME DEPOT”) is a Delaware Corporation
11 doing business in the State of California at all relevant times herein.

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

18 7. At all times mentioned herein, the term “Defendants” includes BELDEN, T&B,
19 LOWE’S, HOME DEPOT and DOES 1-20.

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

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

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated
2 the alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

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

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

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

25 **BACKGROUND AND PRELIMINARY FACTS**

26 14. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures
28 to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

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

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

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

24 18. Plaintiff identified certain practices of manufacturers and distributors of Di Isononyl
25 Phthalate, also known as diisononyl phthalate (“DINP”)-bearing products of exposing,
26 knowingly and intentionally, persons in California to the Proposition 65-listed chemicals
27 of such products without first providing clear and reasonable warnings of such to the
28

1 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants
2 engaged in such practice.

3 19. On December 20, 2013, the Governor of California added DINP to the list of chemicals
4 known to the State to cause cancer. Pursuant to Health and Safety Code sections
5 25249.9 and 25249.10, twenty (20) months after addition of DINP to the list of
6 chemicals known to the State to cause cancer, DINP became fully subject to Proposition
7 65 warning requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

9 20. On or about May 5, 2015, Plaintiff gave notice of alleged violations of Health and
10 Safety Code section 25249.6, concerning consumer products exposures, subject to a
11 private action to BELDEN, T&B and to the California Attorney General, County
12 District Attorneys, and City Attorneys for each city containing a population of at least
13 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
14 product Installation Tools containing DINP.

15 21. On or about July 2, 2015, Plaintiff gave notice of alleged violations of Health and Safety
16 Code section 25249.6, concerning consumer products exposures, subject to a private
17 action to BELDEN, HOME DEPOT and to the California Attorney General, County
18 District Attorneys, and City Attorneys for each city containing a population of at least
19 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
20 product Installation Tools containing DINP.

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

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

4 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
6 for Plaintiff who executed the certificate had consulted with at least one person with
7 relevant and appropriate expertise who reviewed data regarding the exposures to DINP,
8 the subject Proposition 65-listed chemicals of this action. Based on that information, the
9 attorney for Plaintiff who executed the Certificate of Merit believed there was a
10 reasonable and meritorious case for this private action. The attorney for Plaintiff
11 attached to the Certificate of Merit served on the Attorney General the confidential
12 factual information sufficient to establish the basis of the Certificate of Merit.

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

16 26. Plaintiff is commencing this action more than sixty (60) days from the dates that
17 Plaintiff gave notices of the alleged violation to BELDEN, T&B, LOWE'S, HOME
18 DEPOT the public prosecutors referenced in Paragraphs 20 and 22.

19 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
20 any applicable district attorney or city attorney has commenced and is diligently
21 prosecuting an action against the Defendants.

22 **FIRST CAUSE OF ACTION**

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

26 **Installation Tools**

27 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
28 reference paragraphs 1 through 26 of this complaint as though fully set forth herein.

1 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Installation Tools, which includes but is not limited
3 to, “Snap-N-Seal Compression Connector Installation Tool SNSITB-R KB7488 UPC #
4 8 45671 00352 9” (“INSTALLATION TOOLS”).

5 29. INSTALLATION TOOLS contain DINP.

6 30. Defendants knew or should have known that DINP has been identified by the State of
7 California as a chemical known to cause cancer and reproductive toxicity and therefore
8 was subject to Proposition 65 warning requirements. Defendants were also informed of
9 the presence of DINP in INSTALLATION TOOLS within Plaintiff's notice of alleged
10 violations further discussed above at Paragraphs 20 and 22.

11 31. Plaintiff's allegations regarding INSTALLATION TOOLS concerns “[c]onsumer
12 products exposure[s],” which “is an exposure that results from a person's acquisition,
13 purchase, storage, consumption, or other reasonably foreseeable use of a consumer
14 good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs.*
15 *tit. 27, § 25602(b)*. INSTALLATION TOOLS are consumer products, and, as
16 mentioned herein, exposures to DINP took place as a result of such normal and
17 foreseeable use.

18 32. Plaintiff is informed, believes, and thereon alleges that between May 5, 2012 and the
19 present, each of the Defendants knowingly and intentionally exposed their California
20 consumers and users of INSTALLATION TOOLS, which Defendants manufactured,
21 distributed, or sold as mentioned above, to DINP, without first providing any type of
22 clear and reasonable warning of such to the exposed persons before the time of
23 exposure. Defendants have distributed and sold INSTALLATION TOOLS in
24 California. Defendants know and intend that California consumers will use
25 INSTALLATION TOOLS, thereby exposing them to DINP. Defendants thereby
26 violated Proposition 65.

27 33. The principal routes of exposure are through dermal contact, and inhalation. Persons
28 sustain exposures by handling INSTALLATION TOOLS without wearing gloves or any

1 other personal protective equipment, or by touching bare skin or mucous membranes
2 with gloves after handling INSTALLATION TOOLS, as well as through direct and
3 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
4 matter dispersed from INSTALLATION TOOLS.

5 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
6 Proposition 65 as to INSTALLATION TOOLS have been ongoing and continuous to the
7 date of the signing of this complaint, as Defendants engaged and continue to engage in
8 conduct which violates Health and Safety Code section 25249.6, including the
9 manufacture, distribution, promotion, and sale of INSTALLATION TOOLS, so that a
10 separate and distinct violation of Proposition 65 occurred each and every time a person
11 was exposed to DINP by INSTALLATION TOOLS as mentioned herein.

12 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
13 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
14 violations alleged herein will continue to occur into the future.

15 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
16 \$2,500.00 per day per individual exposure to DINP from INSTALLATION TOOLS,
17 pursuant to Health and Safety Code section 25249.7(b).

18 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
19 filing this Complaint.

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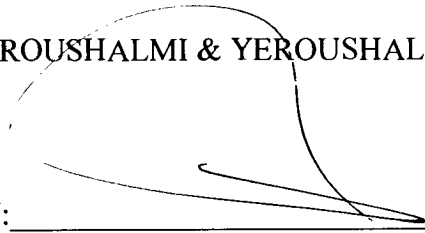
PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: March 16, 2016

YEROUSHALMI & YEROUSHALMI

BY: 
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.