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Attorneys for Plaintiff  
RUSSELL BRIMER

**FILED**

Superior Court of California  
County of San Francisco

DEC 12 2016

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

**DOWMAN UU**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

**CGC 16-555806**

RUSSELL BRIMER,

Plaintiff,

v.

NORTHERN BREWER, LLC; and DOES 1-150, inclusive,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *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 about exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical  
5 found in and on certain vinyl/PVC hoses and the vinyl/PVC grips of certain tools and sold by  
6 defendants in California.

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

14 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC hoses  
15 and the vinyl/PVC grips of tools defendants import, manufacture, distribute, ship, sell, and offer  
16 for sale to consumers throughout the State of California.

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

22 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
23 chemical that is known to cause birth defects or other reproductive harm. DEHP became  
24 subject to the "clear and reasonable warning" requirements of the act one year later on October  
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
26 25249.10(b).

27 6. Defendants manufacture, distribute, import, sell, and offer for sale without a  
28 warning in California, tools with vinyl/PVC grips containing DEHP and vinyl/PVC hoses

1 containing DEHP, including, but not limited to, the vinyl/PVC grip component of the clamp  
2 crimper tool offered in connection with the *Draft Brewer Taproom Maintenance Tool Kit, SKU*  
3 *No. 40074*, and the vinyl/PVC hose component of the *Blichman Engineering Beer Gun*  
4 *Accessory Kit, BE 00212-00, SKU No. K217MicroMatic iPump, Part No. 3167*. All such tools  
5 with vinyl/PVC grips containing DEHP, and vinyl/PVC hoses containing DEHP are referred to  
6 collectively hereinafter as the "PRODUCTS."

7 7. Defendants' failure to warn consumers and other individuals in California of the  
8 harms associated with exposures to DEHP in conjunction with defendants' sales of the  
9 PRODUCTS containing DEHP constitute violations of Proposition 65, and subject defendants,  
10 and each of them, to enjoinder of such conduct, as well as civil penalties for each violation.  
11 Health & Safety Code § 25249.7(a) & (b)(1).

12 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
13 permanent injunctive relief to compel defendants to provide purchasers and users of the  
14 PRODUCTS with the required warning regarding the health hazards associated with exposures  
15 to DEHP. Health & Safety Code § 25249.7(a).

16 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
17 penalties against defendants, and each of them, for each violation of Proposition 65.

18 **PARTIES**

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

23 11. Defendant NORTHERN BREWER, LLC ("NORTHERN BREWER") is a person  
24 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
25 and 25249.11.

26 12. NORTHERN BREWER manufactures, imports, distributes, sells, and/or offers the  
27 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
28

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
4 person in the course of doing business within the meaning of Health and Safety Code sections  
5 25249.6 and 25249.11.

6 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
7 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
8 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
9 California.

10 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
11 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
12 and 25249.11.

13 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
15 in the State of California.

16 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
17 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
18 and 25249.11.

19 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
20 State of California.

21 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
22 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
24 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
25 alleged herein. When ascertained, their true names shall be reflected in an amended Complaint.

26 20. NORTHERN BREWER, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
27 DEFENDANTS, and RETAILER DEFENDANTS are collectively referred to hereinafter as  
28 "DEFENDANTS."

1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the County of San Francisco, pursuant to Code of Civil  
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in this county, and/or because  
6 DEFENDANTS conducted, and continue to conduct, business in San Francisco with respect to  
7 the PRODUCTS.

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

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

18 **FIRST CAUSE OF ACTION**

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

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

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

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

3 27. On June 30, 2016, plaintiff served a sixty-day notice of violation together with an  
4 accompanying certificate of merit on NORTHERN BREWER, the California Attorney General,  
5 and all other requisite public enforcement agencies stating that, as a result of DEFENDANTS’  
6 sales of the PRODUCTS containing DEHP, consumers and other individuals in the State of  
7 California are being exposed to DEHP resulting from their reasonably foreseeable use of the  
8 PRODUCTS, without the individual purchasers and users first having received a “clear and  
9 reasonable warning” regarding the health risks associated with exposures to DEHP, as required  
10 by Proposition 65.

11 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
12 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
13 violations have continued to occur beyond their receipt of plaintiff’s sixty-day notice of  
14 violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature and,  
15 unless enjoined, will continue in the future.

16 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
17 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS for  
18 the alleged violations of Proposition 65 that are the subject of plaintiff’s sixty-day notice.

19 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
20 in California by DEFENDANTS cause exposures to DEHP as a result of the reasonably  
21 foreseeable uses of these PRODUCTS. Such exposures caused by DEFENDANTS and endured  
22 by consumers and other individuals in California are not exempt from the clear and reasonable  
23 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.  
24 DEFENDANTS violations of Proposition 65 by failing to provide warnings to consumers and  
25 other individuals in California exposed to DEHP from the PRODUCTS have continued since at  
26 least as far back as June 30, 2013.

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

1           32.    DEHP is present in or on the PRODUCTS in such a way as to expose individuals  
2 through dermal contact and/or ingestion during reasonably foreseeable uses.

3           33.    The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
4 continue to cause, consumer exposures to DEHP, as such exposures are defined by title 27 of  
5 the California Code of Regulations, section 25602(b).

6           34.    DEFENDANTS know that the normal and reasonably foreseeable uses of the  
7 PRODUCTS expose individuals to DEHP through dermal contact and/or ingestion.

8           35.    DEFENDANTS intend for exposures to DEHP from the reasonably foreseeable  
9 uses of the PRODUCTS to occur by their deliberate, non-accidental participation in the  
10 manufacture, distribution, sale, and offering of the PRODUCTS for sale or use to consumers  
11 and other individuals in the State of California.

12          36.    DEFENDANTS failed to provide a "clear and reasonable warning" to those  
13 consumers and other individuals in California not covered by California's Occupational Safety  
14 Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to DEHP.

15          37.    Contrary to the express policy and statutory prohibitions of Proposition 65  
16 enacted directly by California voters, consumers, and other individuals exposed to DEHP  
17 through dermal contact and/or ingestion, resulting from the reasonably foreseeable uses of the  
18 PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning," have suffered,  
19 and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate  
20 remedy at law.

21          38.    Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
22 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
23 for each violation.

24          39.    As a consequence of the above-described acts, Health and Safety Code  
25 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
26 DEFENDANTS.

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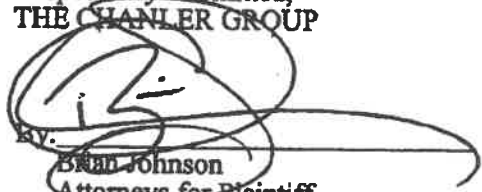
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**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures to DEHP;
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: December 9, 2016

Respectfully Submitted,  
THE CHANLER GROUP  
  
By: Brian Johnson  
Attorneys for Plaintiff  
RUSSELL BRIMER