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ENDORSED  
FILED  
ALAMEDA COUNTY  
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By SUE PESKO

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12 RUSSELL BRIMER

13 Plaintiff,

14 v.

15 LOWE'S COMPANIES, INC.; L G  
16 SOURCING, INC.; HANGZHOU  
GREATSTAR TOOLS CO., LTD.; and  
DOES 1-150, inclusive,

17 Defendants.  
18

Case No. RG15785253

**FIRST AMENDED 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  
28 limited to, *Utilitech Electrical Tape, Model #54794, LW028001-102013, UPC #8 20909 54794*

1 5. All vinyl/PVC electrical tape containing DEHP are referred to collectively hereinafter as  
2 “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 LOWE’S COMPANIES, INC. (“LOWES”) 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. LOWES 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. Defendant L G SOURCING, INC. (“LG”) is a person in the course of doing  
25 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

1           15. Defendant HANGZHOU GREATSTAR TOOLS CO., LTD. (“GREATSTAR”) is  
2 a person in the course of doing business within the meaning of Health and Safety Code sections  
3 25249.6 and 25249.11.

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

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

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

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

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

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

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

26           23. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
27 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
28 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis

1 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
2 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

3 24. LOWES, LG, GREATSTAR, MANUFACTURER DEFENDANTS,  
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,  
5 collectively be referred to as “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

7 25. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil  
8 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
9 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
10 wrongful conduct occurred, and continue to occur, in this county, and/or because  
11 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect  
12 to the PRODUCTS.

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

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

23 **FIRST CAUSE OF ACTION**

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

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

27 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
28 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

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

14 32. On July 29, 2016, Plaintiff served a supplemental sixty-day notice, together with  
15 the requisite certificate of merit, on LOWES, LG, GREATSTAR and certain public  
16 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS  
17 containing DEHP, consumers in the State of California were being exposed to DEHP resulting  
18 from their reasonably foreseeable use of the PRODUCTS, without the consumers first having  
19 been provided with a “clear and reasonable warning” regarding the harms associated with such  
20 exposures, as required by Proposition 65.

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

26 34. After receiving plaintiff’s sixty-day notices of violation, no public enforcement  
27 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
28

1 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of  
2 violation.

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

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

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

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

15 39. DEFENDANTS know that the normal and reasonably foreseeable use of the  
16 PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

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

21 41. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
22 consumers in California who were or who would become exposed to DEHP through dermal  
23 contact and/or ingestion resulting from their use of the PRODUCTS.

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

