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ENDORSED  
2016 DEC -6 AM 10:43  
David H. Yarnall, Clerk of Superior Court  
County of Santa Clara, California  
By: \_\_\_\_\_  
T. Mai

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

**16 CV 303618**

RUSSELL BRIMER,  
  
Plaintiff,  
  
v.  
  
A & E INCORPORATED and DOES 1-150,  
inclusive,  
  
Defendants.

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

**NATURE OF THE ACTION**

1  
2 1. This Complaint is a representative action brought by plaintiff Russell Brimer in  
3 the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to di(2-ethylhexyl) phthalate (“DEHP”), a  
5 toxic chemical found in and on the exterior covering materials of retractable test leads 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 materials used in the exterior covering of retractable  
11 test leads manufactured, distributed, and offered for sale or use throughout the State of  
12 California. Individuals not covered by California’s Occupational Safety Health Act, Labor Code  
13 section 6300 et seq., who purchase, use or handle defendants’ products, are referred to  
14 hereinafter as “consumers.”

15 3. Detectable levels of DEHP are found in and on the exterior coverings of  
16 retractable test leads that defendants manufacture, distribute, and offer for sale to consumers  
17 throughout the State of California.

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

23 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
24 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became  
25 subject to the “clear and reasonable warning” requirements of the act one year later on October  
26 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
27 25249.10(b).  
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1 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
 2 hazard warnings in California, retractable test leads with exterior coverings that contain DEHP  
 3 including, but not limited to, exterior cover materials of the *Lang Tools 10 FT. Retractable Test*  
 4 *Leads, Part No. 1140, #20915, UPC #0 77769 20915 9*. All such retractable test leads with  
 5 exterior coverings containing DEHP are referred to collectively hereinafter as “PRODUCTS.”

6 7. Defendants’ failure to warn consumers in the State of California of the health  
 7 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the  
 8 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
 9 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
 10 § 25249.7(a) & (b)(1).

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

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

17 **PARTIES**

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

22 11. Defendant A & E Incorporated (“A & E”) is a person in the course of doing  
 23 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

24 12. A & E manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
 25 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
 26 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

27 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
 28

1 person in the course of doing business within the meaning of Health and Safety Code sections  
2 25249.6 and 25249.11.

3 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
4 assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design,  
5 assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in  
6 California.

7 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
8 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
9 and 25249.11.

10 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
11 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
12 retailers for sale or use in the State of California, or imply by their conduct that they distribute,  
13 exchange, transfer, process, and transport one or more of the PRODUCTS to individuals,  
14 businesses, or retailers for sale or use in the State of California.

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

18 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
19 individuals in the State of California.

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

25 20. A & E, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
26 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively  
27 as the “DEFENDANTS.”  
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**VENUE AND JURISDICTION**

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

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

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

**FIRST CAUSE OF ACTION**

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

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

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

26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual . . . .” Health & Safety Code § 25249.6.

3 27. On September 7, 2016, Plaintiff served a sixty-day notice of violation, together  
4 with the accompanying certificate of merit, on A & E, the California Attorney General, and all  
5 other requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales  
6 of the PRODUCTS, consumers and other individuals in California are being exposed to DEHP  
7 resulting from their reasonably foreseeable use of the PRODUCTS, without these consumers  
8 and other individuals first receiving a “clear and reasonable warning” regarding the harms  
9 associated with exposures to DEHP, as required by Proposition 65.

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

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

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
20 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
22 consumers in California are not exempt from the “clear and reasonable” warning requirements of  
23 Proposition 65, yet DEFENDANTS provide no clear and reasonable warning. DEFENDANTS’  
24 violations of Proposition 65, resulting from their failure to provide warnings to consumers and  
25 other individuals in California exposed to DEHP from the PRODUCTS have continued since as  
26 far back as September 7, 2013.

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

3           32. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
4 and other individuals through dermal contact and/or ingestion during reasonably foreseeable  
5 use.

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

9           34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
10 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

11           35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
12 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
13 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale to  
14 consumers in California.

15           36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
16 consumers and other individuals in California who have been, or who will be, exposed to DEHP  
17 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

18           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
19 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
20 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear  
21 and reasonable” health hazard warning have suffered, and continue to suffer, irreparable harm  
22 for which they have no plain, speedy, or adequate remedy at law.

23           38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
24 above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty  
25 of \$2,500 per day for each violation.  
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1 39. As a consequence of the above-described acts, Health and Safety Code  
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

6 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
7 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
8 each violation;

9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
11 offering the PRODUCTS for sale or use in California without first providing a "clear and  
12 reasonable warning" in accordance with title 27 of the California Code of Regulations, section  
13 25601 *et seq.*, regarding the harms associated with exposures to DEHP;


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

18 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and

19 5. That the Court grant such other and further relief as may be just and proper.  
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21 Dated: November 21, 2016

Respectfully submitted,  
THE CHANLER GROUP

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24 By:   
Brian Johnson  
Attorneys for Plaintiff  
RUSSELL BRIMER  
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