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**ENDORSED**  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

**115CV281919**

RUSSELL BRIMER,  
  
Plaintiff,  
  
v.  
  
STANDARD MOTOR PRODUCTS, INC.;  
and DOES 1-150, inclusive,  
  
Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *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 about exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical  
5 that is found in vinyl/PVC tool grips that are sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
7 warn California citizens about the risks of exposures to DEHP present in and on the vinyl/PVC  
8 tool grips manufactured, distributed, and offered for sale or use to consumers throughout the  
9 State of California.

10 3. Detectable levels of DEHP are commonly found in and on components of  
11 vinyl/PVC tool grips that defendants import, manufacture, distribute, ship, sell and/or offer for  
12 sale to consumers throughout the State of California.

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

18 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
19 chemical that is known to cause birth defects or other reproductive harm. DEHP became  
20 subject to the "clear and reasonable warning" requirements of the act one year later on October  
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b). DEHP is referred to hereinafter as the "LISTED CHEMICAL."

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
24 warning in California, vinyl/PVC tool grips containing the LISTED CHEMICAL, including, but  
25 not limited to, the *Standard Heavy Duty Booster Cable Clamp, BP98R, UPC #0 91769 04260 8*.  
26 All such vinyl/PVC tool grips containing the LISTED CHEMICAL are referred to collectively  
27 hereinafter as the "PRODUCTS."

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

6           8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
7 permanent injunctive relief to compel defendants to provide purchasers or users of the  
8 PRODUCTS with the required warning regarding the health hazards associated with exposures  
9 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

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

## **PARTIES**

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

16           11. Defendant STANDARD MOTOR PRODUCTS, INC. ("SMP") is a company in  
17 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
18 and 25249.11.

19           12. SMP manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
20 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,  
21 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

22           13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
23 person in the course of doing business within the meaning of Health and Safety Code sections  
24 25249.6 and 25249.11.

25           14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
26 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

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

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

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

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
13 State of California.

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

19 20. SMP, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
20 and RETAILER DEFENDANTS are hereinafter collectively referred to as “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

22 21. Venue is proper in the County of Santa Clara, pursuant to Code of Civil  
23 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
24 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
25 wrongful conduct occurred, and continue to occur, in this county, and/or because  
26 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with  
27 respect to the PRODUCTS.  
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1           22. The California Superior Court has jurisdiction over this action pursuant to  
2 California Constitution Article VI, section 10, which grants the Superior Court “original  
3 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
4 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

11   **FIRST CAUSE OF ACTION**

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

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

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

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

23           27. On March 31, 2015, plaintiff’s sixty-day notice of violation, together with the  
24 requisite certificate of merit, was provided to SMP and certain public enforcement agencies  
25 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED  
26 CHEMICAL, consumers, and other individuals in the State of California were being exposed to  
27 the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,  
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1 without the individual purchasers and users first having received a “clear and reasonable  
2 warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
6 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
7 continuous in nature, and will continue to occur in the future.

8 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
9 enforcement agencies have failed to commence and diligently prosecute a cause of action  
10 against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
12 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
13 reasonably foreseeable uses of these products result in exposures that require a “clear and  
14 reasonable” warning under Proposition 65.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they  
16 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
17 CHEMICAL.

18 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
19 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

20 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
21 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
22 defined by title 27 of the California Code of Regulations, section 25602(b).

23 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
24 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
25 and/or ingestion.

26 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
27 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental  
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1 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
2 use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and other individuals in California not covered by California’s Occupational Safety  
5 Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to the LISTED  
6 CHEMICAL.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
8 directly by California voters, consumers, and other individuals exposed to the LISTED  
9 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable  
10 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”  
11 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
12 adequate remedy at law.

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

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

19 **PRAYER FOR RELIEF**

20 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
26 offering the PRODUCTS for sale or use in California without first providing a “clear and  
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1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
2 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

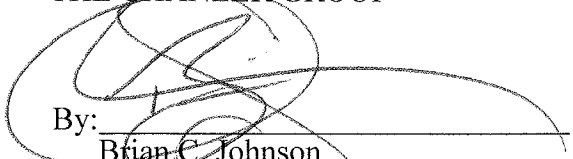
3 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

4 4. That the Court grant such other and further relief as may be just and proper.

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6 Dated: June 15, 2015

Respectfully Submitted,

THE CHANLER GROUP



By: \_\_\_\_\_  
Brian C. Johnson  
Attorneys for Plaintiff  
RUSSELL BRIMER

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