

1 Clifford A. Chanler, State Bar No. 135534  
Daniel Bornstein, State Bar No. 181711  
2 CHANLER LAW GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
6 RUSSELL BRIMER

ENDORSED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

FEB - 5 2010

GORDON PARK-LI, Clerk  
BY: PARAM NATT  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

11  
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 THE FAUCET-QUEENS, INC.; RITE AID  
CORPORATION; and DOES 1-150,  
16 inclusive,

17 Defendants.

Case No. GGC-10-496695

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

(*Cal. Health & Safety Code § 25249.6 et seq.*)

18 CASE MANAGEMENT CONFERENCE SET

19 JUL - 9 2010 9<sup>00</sup> AM

20 DEPARTMENT 212  
21  
22  
23  
24  
25  
26  
27  
28

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 presence of lead, a toxic chemical found in jumper/booster cables  
5 sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to  
7 warn California citizens about their exposure to lead, present in or on certain jumper/booster  
8 cables that defendants manufacture, distribute and/or offer for sale to consumers throughout the  
9 State of California.

10 3. High levels of lead are commonly found in and on jumper/booster cables that  
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
12 California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No 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. . . ." (*Cal. Health & Safety Code § 25249.6.*)

18 5. On February 27, 1987, California identified and listed lead as a chemical known  
19 to cause birth defects and other reproductive harm. Lead became subject to the warning  
20 requirement one year later and was therefore subject to the "clear and reasonable warning"  
21 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*  
22 *Health & Safety Code § 25249.8.*) Lead shall be referred to hereinafter as the "LISTED  
23 CHEMICAL."

24 6. Defendants manufacture, distribute, and/or sell jumper/booster cables containing  
25 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Helping Hand*  
26 *Booster Cables No#73155 (#0 0792 73155 0)*. All such jumper/booster cables containing the  
27 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."  
28



1 engage in the process of research, testing, designing, assembling, fabricating and/or  
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

3 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 doing business within the meaning of California Health & Safety Code § 25249.11.

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

8 18. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing  
9 business within the meaning of California Health & Safety Code § 25249.11.

10 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

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

17 21. FAUCET-QUEENS, RITE AID, MANUFACTURER DEFENDANTS,  
18 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,  
19 collectively be referred to hereinafter as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 22. Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
22 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,  
23 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
24 County of San Francisco and/or because DEFENDANTS conducted, and continue to conduct,  
25 business in this County with respect to the PRODUCTS.

26 23. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
28

1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 action is brought does not specify any other basis of subject matter jurisdiction.

3 24. The California Superior Court has jurisdiction over DEFENDANTS based on  
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
5 association that either are citizens of the State of California, have sufficient minimum contacts  
6 in the State of California, or otherwise purposefully avail themselves of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

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

13 26. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*  
15 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
16 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

17 27. Proposition 65 states, “No person in the course of doing business shall knowingly  
18 and intentionally expose any individual to a chemical known to the state to cause cancer or  
19 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
20 (*Id.*)

21 28. On August 14, 2009, a sixty-day notice of violation, together with the requisite  
22 certificate of merit, was provided to FAUCET-QUEENS, RITE AID and various public  
23 enforcement agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS,  
24 purchasers and users in the State of California were being exposed to lead resulting from the  
25 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
26 first having been provided with a “clear and reasonable warning” regarding such toxic  
27 exposures.  
28

1           29.    DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
3 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
4 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
5 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges  
6 and believes that such violations will continue to occur into the future.

7           30.    After receipt of the claims asserted in the sixty-day notices of violation, the  
8 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
9 cause of action against DEFENDANTS under Proposition 65.

10          31.    The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
11 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
12 limits.

13          32.    DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
14 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
15 LISTED CHEMICAL.

16          33.    The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
17 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
18 during the reasonably foreseeable use of the PRODUCTS.

19          34.    The normal and reasonably foreseeable use of the PRODUCTS has caused and  
20 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is  
21 defined by 27 CCR § 25602(b).

22          35.    DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
23 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
24 and/or ingestion.

25          36.    DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
26 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
27 accidental participation in the manufacture, distribution and/or offer for sale or use of  
28 PRODUCTS to individuals in the State of California.



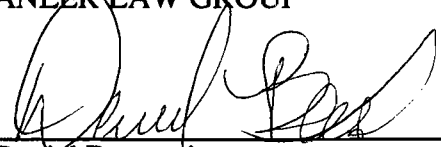
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 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: February 5, 2010

Respectfully Submitted,

CHANLER LAW GROUP

By: 

Daniel Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER