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**FILED**

MAY 11 2010

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: K. Main, Deputy

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 LUSTER LEAF PRODUCTS INC. and  
19 DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 1002452

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(Cal. 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 of the presence of lead, a toxic chemical found in color coated wire sold in  
5 California.

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

10 3. High levels of lead are commonly found in and on color coated wires that  
11 defendant manufactures, distributes and/or offers 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. Defendant manufactures, distributes, and/or sells vinyl-coated wires containing  
25 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Rapiclip Heavy*  
26 *Duty Garden Wire, No. 834 (#0 35307 00834 3)*. All such color coated wire containing the  
27 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”  
28

1 7. Defendant’s failures to warn consumers and/or other individuals in the State of  
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendant’s  
3 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder  
4 of such conduct as well as civil penalties for each such violation.

5 8. For defendant’s violations of Proposition 65, plaintiff seeks preliminary injunctive  
6 and permanent injunctive relief to compel defendant to provide purchasers or users of the  
7 PRODUCTS with the required warning regarding the health hazards of the LISTED  
8 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

9 9. Plaintiff also seeks civil penalties against defendant for its violations of  
10 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

11 **PARTIES**

12 10. Plaintiff RUSSELL BRIMER, is a citizen of the County of Alameda in the State  
13 of California who is dedicated to protecting the health of California citizens through the  
14 elimination or reduction of toxic exposures from consumer products, and brings this action in  
15 the public interest pursuant to California Health & Safety Code § 25249.7.

16 11. Defendant LUSTER LEAF PRODUCTS, INC (“LUSTER LEAF”), is a person  
17 doing business within the meaning of California Health & Safety Code § 25249.11.

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

22 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
23 persons doing business within the meaning of California Health & Safety Code § 25249.11.

24 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
25 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
26 engage in the process of research, testing, designing, assembling, fabricating and/or  
27 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

8 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
9 State of California.

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

15 20. LUSTER LEAF, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
16 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be  
17 referred to hereinafter as “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

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

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

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1 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges  
2 and believes that such violations will continue to occur into the future.

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

6 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
8 limits.

9 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
10 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
11 LISTED CHEMICAL.

12 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
13 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
14 during the reasonably foreseeable use of the PRODUCTS.

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
16 continues to cause consumer and occupational exposures to the LISTED CHEMICAL, as such  
17 exposure is defined by 27 CCR § 25602(b).

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
20 and/or ingestion.

21 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
22 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
23 accidental participation in the manufacture, distribution and/or offer for sale or use of  
24 PRODUCTS to individuals in the State of California.

25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
26 consumers and/or other individuals in the State of California who were or who could become  
27 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
28 reasonably foreseeable use of the PRODUCTS.

1 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
2 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
3 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
4 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
5 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

6 38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
7 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
8 Safety Code § 25249.7(b).

9 39. As a consequence of the above-described acts, California Health & Safety Code  
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
11 DEFENDANTS.

12 40. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
13 hereinafter.

14 **PRAYER FOR RELIEF**

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

16 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
18 alleged herein;

19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
22 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures the  
23 LISTED CHEMICAL;

24  
25 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

26 4. That the Court grant such other and further relief as may be just and proper.  
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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: May 11, 2010

Respectfully Submitted,

THE CHANLER GROUP

By: 

Daniel Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER