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**FILED**

**JUN 28 2010**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Hendryx, Deputy

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION  
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 RUG DOCTOR, INC.; and DOES 1-150,  
20 inclusive,

21 Defendants.

Case No. CIV 1003366

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**BY FAX**

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 carpet cleaners with  
5 universal hand tool attachments containing lead 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 carpet cleaners  
8 with universal hand tool attachments that defendants manufacture, distribute, and/or offer for  
9 sale to consumers throughout the State of California.

10 3. High levels of lead are commonly found in and on carpet cleaners with universal  
11 hand tool attachments that defendants manufacture, distribute, and/or offer for sale to  
12 consumers throughout the State of 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  
15 of doing business shall knowingly and intentionally expose any individual to a chemical known  
16 to 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 carpet cleaners with universal  
25 hand tool attachments containing excessive levels of the LISTED CHEMICAL including, but  
26 not limited to, the *Rug Doctor Mighty Pro Professional-Grade Carpet Cleaner, Model MP-C2D*  
27 (*#0 74999 09586 6*). All such carpet cleaners with universal hand tool attachments containing  
28 the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”





1 in the State of California, or otherwise purposefully avail themselves of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

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

8 25. The citizens of the State of California have expressly stated in the Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*  
10 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer,  
11 birth defects and other reproductive harm." (*Cal. Health & Safety Code § 25249.6*)

12 26. Proposition 65 states, "No person in the course of doing business shall knowingly  
13 and intentionally expose any individual to a chemical known to the state to cause cancer or  
14 reproductive toxicity without first giving clear and reasonable warning to such individual...."  
15 (*Id.*)

16 27. On December 15, 2009, a sixty-day notice of violation, together with the requisite  
17 certificate of merit, was provided to RUG DOCTOR and various public enforcement agencies  
18 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in  
19 the State of California were being exposed to lead resulting from the reasonably foreseeable  
20 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
21 with a "clear and reasonable warning" regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
23 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
24 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
25 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
26 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges  
27 and believes that such violations will continue to occur into the future.

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

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

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

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

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

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

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

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

27          37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
2 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to  
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 39. As a consequence of the above-described acts, California Health & Safety Code  
8 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

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

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

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

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

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

22  
23 Respectfully Submitted,

24 THE CHANLER GROUP

24 Dated: June 29, 2010

25  
26 By: 

27 Christopher Martin  
28 Attorneys for Plaintiff  
RUSSELL BRIMER