

**FILED**

**JUN 28 2010**

**KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT**

*By: S. Hendrix, Deputy*

1 Clifford A. Chanler, State Bar No. 135534  
2 Christopher M. Martin, State Bar No. 186021  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 RUSSELL BRIMER

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 MELNOR, INC.; and DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 1003367

**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 watering gun/nozzles  
5 with hand grips 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 watering  
8 gun/nozzles with hand grips that defendants manufacture, distribute, and/or offer for sale to  
9 consumers throughout the State of California.

10 3. High levels of lead are commonly found in and on watering gun/nozzles with  
11 hand grips that defendants manufacture, distribute, and/or offer for sale to consumers  
12 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 watering gun/nozzles with hand  
25 grips containing excessive levels of the LISTED CHEMICAL including, but not limited to, the  
26 *Melnor Metal Aqua Gun, #T201 (#0 42206 20201 7)*. All such watering guns/nozzles with hand  
27 grips containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”  
28



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

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

6           18.    RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
7 State of California.

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

13           20.    MELNOR, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be  
15 referred to hereinafter as “DEFENDANTS.”

#### 16                                       **VENUE AND JURISDICTION**

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

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

26           23.    The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
28 association that either are citizens of the State of California, have sufficient minimum contacts

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 February 12, 2010, a sixty-day notice of violation, together with the requisite  
17 certificate of merit, was provided to MELNOR and various public enforcement agencies stating  
18 that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the  
19 State of California were being exposed to lead resulting from the reasonably foreseeable uses of  
20 the PRODUCTS, without the individual purchasers and users first having been provided with a  
21 "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 in  
25 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 Dated: June 28, 2010

THE CHANLER GROUP

25  
26 By: 

27 Christopher Martin  
28 Attorneys for Plaintiff  
RUSSELL BRIMER