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ALAMEDA COUNTY

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BY BARBARA C. YOUNG, DEPUTY

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 Jennifer Henry, State Bar No. 208221
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
7 RUSSELL BRIMER

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 CHARDON CORP.; TRUE VALUE
16 COMPANY; and DOES 1-150, inclusive,

17 Defendants.

Case No. _____

C. G 10543915

**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 Proman Tool Flashlights
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 Proman Tool
8 Flashlights that defendants import, manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of lead are commonly found in and on Proman Tool Flashlights that
11 defendants import, manufacture, distribute, and/or offer for sale to consumers throughout the
12 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 import, manufacture, distribute, and/or sell Proman Tool Flashlights
25 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the
26 *Proman Tool 2AA Flashlight, #82007 (#7 41219 82007 5)*. All such Proman Tool Flashlights
27 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."
28

1 County with respect to the PRODUCTS.

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

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

12 **FIRST CAUSE OF ACTION**

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

14 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
15 Paragraphs 1 through 25, inclusive.

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

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

24 29. On July 1, 2010, a sixty-day notice of violation, together with the requisite
25 certificate of merit, was provided to CHARDON, TRUE VALUE and various public
26 enforcement agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS,
27 purchasers and users in the State of California were being exposed to lead resulting from the
28 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users

1 first having been provided with a “clear and reasonable warning” regarding such toxic
2 exposures.

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

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

12 32. The PRODUCTS imported, manufactured, distributed, and/or offered for sale or
13 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable
14 state limits.

15 33. DEFENDANTS knew or should have known that the PRODUCTS imported,
16 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California
17 contained the LISTED CHEMICAL.

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

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

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

27 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
28 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the importation, manufacture, distribution, and/or offer for sale or use
2 of PRODUCTS to individuals in the State of California.

3 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the State of California who were or who could become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable use of the PRODUCTS.

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

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

15 41. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 42. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
19 hereinafter.

20 **PRAAYER FOR RELIEF**

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

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

25 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
26 preliminarily and permanently enjoin DEFENDANTS from importing, manufacturing,
27 distributing or offering the PRODUCTS for sale or use in California, without providing “clear
28 and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with


1 exposures the LISTED CHEMICAL;

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

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

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6 Dated: October 26, 2010

Respectfully Submitted,
THE CHANLER GROUP

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8 By: 
9 Jennifer Henry
10 Attorneys for Plaintiff
11 RUSSELL BRIMER
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