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FILED
NOV 12 2010
K. TORRE CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By Green Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF CONTRA COSTA
10 UNLIMITED CIVIL JURISDICTION

11 **C 10-03253**

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 TOWER ENERGY GROUP; and DOES 1-
16 150, inclusive,

17 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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19 PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
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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 flashlights sold in
5 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 flashlights that
8 defendants import, 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 flashlights that defendants
11 import, 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
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 flashlights containing
25 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Multifunctional*
26 *LED Flashlight, KC91081 (#8 53371 91081 8)*. All such flashlights containing the LISTED
27 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."
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1 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation.
2 Plaintiff further alleges and believes that such violations will continue to occur into the future.

3 29. After receipt of the claims asserted in the sixty-day notice 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 imported, manufactured, distributed, and/or offered for sale or
7 use in California by DEFENDANTS contained the LISTED CHEMICAL above the allowable
8 state limits.

9 31. DEFENDANTS knew or should have known that the PRODUCTS imported,
10 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California
11 contained the 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 exposures to the LISTED CHEMICAL, as such exposure is
17 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 importation, manufacture, distribution, and/or offer for sale or use
24 of 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.

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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: November 12, 2010

Respectfully Submitted,
THE CHANLER GROUP

By: 
Jennifer Henry
Attorneys for Plaintiff
RUSSELL BRIMER