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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CLERK OF COURT

BY: RUSSELL BRIMER

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 HOWARD BERGER COMPANY, INC.;;
16 and DOES 1-150, inclusive,

17 Defendants.
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Case No. SGC-10-505118

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

VIA 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 work lights with clamp
5 handles sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
7 warn California citizens about their exposures to lead, present in or on certain work lights with
8 clamp handles that defendants 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 work lights with clamp handles
11 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State
12 of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code Section 25249.6 *et seq.* ("Proposition 65"), "No person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

18 5. On February 27, 1987, the State of California identified and listed lead as a
19 chemical known to cause birth defects and other reproductive harm. Lead became subject to the
20 warning requirement one year later and was therefore subject to the "clear and reasonable
21 warning" requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001*
22 *(c); Cal. Health & Safety Code § 25249.8.*) Lead shall hereinafter be referred to as the
23 "LISTED CHEMICAL".

24 6. Defendants manufacture, distribute, and/or sell work lights with clamp handles
25 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *H.B.*
26 *Smith Tools 3 Way Work Light, WL 250 (#0 75877 11512 6)*. All such work lights with clamp
27 handles containing the LISTED CHEMICAL shall hereinafter be referred to as the
28 "PRODUCTS".

1 occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff
2 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 manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
8 allowable State 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 exposures to the LISTED CHEMICAL, as such exposure is
17 defined by 27 CCR Section 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 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

3 Dated: November 3, 2010

Respectfully submitted,

4 THE CHANLER GROUP

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6 By: 

Stephen S. Sayad
Attorneys for Plaintiff
RUSSELL BRIMER

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