

ENDORSED  
FILED  
ALAMEDA COUNTY

10 DEC -7 PM 3:44

CLERK OF THE SUPERIOR COURT  
BY BARBARA C. YOUNG, 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 ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
15

16 RUSSELL BRIMER,

17 Plaintiff,

18 v.

19 HOPKINS MANUFACTURING  
20 CORPORATION; CARRAND  
21 COMPANIES, INC.; and DOES 1-150,  
22 inclusive,

23 Defendants.

Case No. RG 10550112

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**VIA FAX**

**NATURE OF THE ACTION**

1  
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 padlocks 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 padlocks that  
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
9 California.

10          3.     High levels of lead are commonly found in and on padlocks that defendants  
11 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

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

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

23          6.     Defendants manufacture, distribute, and/or sell padlocks containing excessive  
24 levels of the LISTED CHEMICAL including, but not limited to, the *ProTecTor Weather*  
25 *Resistant Mudguard, #63011 (#0 48374 63011 9)*. All such padlocks containing the LISTED  
26 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

27          7.     Defendants’ failures to warn consumers and/or other individuals in the State of  
28 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’

1 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder  
2 of such conduct as well as civil penalties for each such violation.

3 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
4 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
5 PRODUCTS with the required warning regarding the health hazards of the LISTED  
6 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

7 9. Plaintiff also seeks civil penalties against defendants for their violations of  
8 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 10. Plaintiff RUSSELL BRIMER, is a citizen of the State of California who is  
11 dedicated to protecting the health of California citizens through the elimination or reduction of  
12 toxic exposures from consumer products, and brings this action in the public interest pursuant to  
13 California Health & Safety Code § 25249.7.

14 11. Defendant HOPKINS MANUFACTURING CORPORATION ("HOPKINS") is a  
15 person doing business within the meaning of California Health & Safety Code § 25249.11.

16 12. Defendant HOPKINS manufactures and/or distributes the PRODUCTS for sale or  
17 use in the State of California or implies by its conduct that it manufactures and/or distributes the  
18 PRODUCTS for sale or use in the State of California.

19 13. Defendant CARRAND COMPANIES, INC. ("CARRAND") is a person doing  
20 business within the meaning of California Health & Safety Code § 25249.11.

21 14. Defendant CARRAND manufactures and/or distributes the PRODUCTS for sale  
22 or use in the State of California or implies by its conduct that it manufactures and/or distributes  
23 the PRODUCTS for sale or use in the State of California.

24 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
25 persons doing business within the meaning of California Health & Safety Code § 25249.11.

26 16. MANUFACTURER DEFENDANTS engage in the process of researching,  
27 testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that  
28

1 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

3 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 doing business within the meaning of California Health & Safety Code § 25249.11.

5 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
6 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
7 the State of California.

8 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons  
9 doing business within the meaning of California Health & Safety Code § 25249.11.

10 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

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

17 22. HOPKINS, CARRAND, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to hereinafter as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

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

26 24. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
28

1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

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

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

13 27. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*  
15 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
16 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

21 29. On August 5, 2010, a sixty-day notice of violation, together with the requisite  
22 certificate of merit, was provided to HOPKINS, CARRAND and various public enforcement  
23 agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers  
24 and users in the State of California were being exposed to lead resulting from the reasonably  
25 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
26 been provided with a “clear and reasonable warning” regarding such toxic exposures.

27 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
28 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and

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

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

8 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
9 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
10 limits.

11 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
12 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
13 LISTED CHEMICAL.

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

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

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

23 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
24 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
25 accidental participation in the manufacture, distribution and/or offer for sale or use of  
26 PRODUCTS to individuals in the State of California.

27 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
28 consumers and/or other individuals in the State of California who were or who could become

1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
2 reasonably foreseeable use of the PRODUCTS.

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

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

11 41. As a consequence of the above-described acts, California Health & Safety Code  
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

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

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

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

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

26 ///

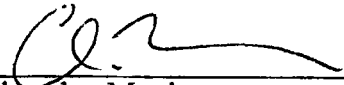
27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: December 7, 2010

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Christopher Martin  
Attorneys for Plaintiff  
RUSSELL BRIMER