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FILED BY FAX

ALAMEDA COUNTY

March 15, 2011

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:

RG11565734

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

CENTRAL PURCHASING, LLC,
HARBOR FREIGHT TOOLS USA, INC.
and DOES 1-150, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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 certain of defendant's
5 tape measure products manufactured, distributed and/or otherwise sold by defendants in
6 California.

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

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

18 4. Significant levels of the LISTED CHEMICAL have been discovered in or on
19 certain tape measures that defendants manufacture, distribute, and/or offer for sale to consumers
20 throughout the State of California including, but not limited to, the *Cen-Tech 100 Ft. Reel Tape*
21 *Measure, Item 36818* (#7 92363 36818 6). All such tape measures containing the LISTED
22 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

23 5. Defendants' failure to warn consumers and/or other individuals in the State of
24 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'
25 sale of the PRODUCTS is a violation of Proposition 65.

26 6. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide purchasers or users of the
28

1 PRODUCTS with the required warning regarding the health hazards of the LISTED
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

5 **PARTIES**

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

10 9. Defendants CENTRAL PURCHASING, LLC (“CENTRAL PURCHASING”) and HARBOR FREIGHT TOOLS USA, INC. (“HARBOR FREIGHT”) are each persons doing
11 business within the meaning of California Health & Safety Code Section 25249.11.
12

13 10. Defendants CENTRAL PURCHASING and HARBOR FREIGHT manufacture,
14 distribute, and/or offer the PRODUCTS for sale or use in the State of California or imply by
15 their conduct that they manufacture, distribute, and/or offer the PRODUCTS for sale or use in
16 the State of California.

17 11. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
18 persons doing business within the meaning of California Health & Safety Code Section
19 25249.11.

20 12. MANUFACTURER DEFENDANTS engage in the process of research, testing,
21 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
22 engage in the process of research, testing, designing, assembling, fabricating, and/or
23 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

24 13. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
25 doing business within the meaning of California Health & Safety Code Section 25249.11.

26 14. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
27 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
28 the State of California.

1 **FIRST CAUSE OF ACTION**

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

3 22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 21, inclusive.

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

9 24. On October 15, 2010, a sixty-day notice of violation (“60-Day Notice”), together
10 with the requisite Certificate of Merit, was provided to CENTRAL PURCHASING, HARBOR
11 FREIGHT and various public enforcement agencies stating that as a result of the
12 DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of California are
13 being exposed to lead resulting from the reasonably foreseeable uses of the PRODUCTS,
14 without the individual purchasers and users first having been provided with a “clear and
15 reasonable warning” regarding such toxic exposures.

16 25. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
17 the PRODUCTS for sale or use in violation of California Health & Safety Code Section
18 25249.6 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for
19 sale or use in violation of California Health & Safety Code Section 25249.6 has continued to
20 occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further alleges
21 and believes that such violations will continue to occur into the future.

22 26. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
23 enforcement agencies have failed to commence and diligently prosecute a cause of action
24 against DEFENDANTS under Proposition 65.

25 27. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
26 California by DEFENDANTS, contain the LISTED CHEMICAL.

27 28. DEFENDANTS knew or should have known that the PRODUCTS contained the
28 LISTED CHEMICAL.

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

4 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
6 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
7 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to
8 the LISTED CHEMICAL;

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

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

11
12 Dated: March 15, 2011

Respectfully submitted,

THE CHANLER GROUP

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14
15 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
RUSSELL BRIMER