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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

AMASH IMPORTS, INC.; MICHIGAN
INDUSTRIAL TOOLS; and DOES 1-150,
inclusive,

Defendants.

Case No. GV 1104615

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,
3 in the public interest of the citizens of the State of California, to enforce the People's right to be
4 informed of the presence of lead, a toxic chemical found in tools with grips sold in California.

5 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
6 California citizens about their exposure to lead, present in or on certain tools with grips that
7 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
8 California.

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

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

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

21 6. Defendants manufacture, distribute, and/or sell tools with grips containing
22 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Adjustable Rapid*
23 *Wrench, #2318 (#0 20209 02318 1)*. All such tools with grips containing the LISTED
24 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

25 7. Defendants' failures to warn consumers and/or other individuals in the State of
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale
27 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
28 conduct as well as civil penalties for each such violation.

1 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
2 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
3 the State of California.

4 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons
5 doing business within the meaning of California Health & Safety Code § 25249.11.

6 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
7 State of California.

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

13 21. AMASH, MIT, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
15 referred to hereinafter as "DEFENDANTS."

16 VENUE AND JURISDICTION

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

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

26 24. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

8 26. The citizens of the State of California have expressly stated in Proposition 65 that
9 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
10 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

11 27. Proposition 65 states, "No person in the course of doing business shall knowingly
12 and intentionally expose any individual to a chemical known to the state to cause cancer or
13 reproductive toxicity without first giving clear and reasonable warning to such individual..." (*Id.*)

14 28. On or about February 1, 2011, sixty-day notices of violation, together with the
15 requisite certificates of merit, were provided to AMASH, MIT and various public enforcement
16 agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and
17 users in the State of California were being exposed to lead resulting from the reasonably
18 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
19 been provided with a "clear and reasonable warning" regarding such toxic exposures.

20 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
21 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
22 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in
23 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
24 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges and
25 believes that such violations will continue to occur into the future.

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

1 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
3 limits.

4 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
6 CHEMICAL.

7 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
8 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
9 the reasonably foreseeable use of the PRODUCTS.

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

13 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
15 and/or ingestion.

16 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
17 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
18 participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to
19 individuals in the State of California.

20 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and/or other individuals in the State of California who were or who could become
22 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
23 reasonably foreseeable use of the PRODUCTS.

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

