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David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: _____
Deputy Clerk

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SANTA CLARA
9 UNLIMITED CIVIL JURISDICTION

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RUSSELL BRIMER,

Plaintiff,

v.

SAKAR INTERNATIONAL, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. 112CV234766

**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
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 defendant's continuing failure to warn
7 California citizens about their exposure to lead, present in or on certain flashlights that defendant
8 manufactures, imports, distributes, sells, and/or offers for sale to consumers throughout the State
9 of California.

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

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

20 5. Defendant SAKAR INTERNATIONAL, INC. ("Sakar" or "Defendant")
21 manufactures, imports, distributes, sells, and/or offers for sale flashlights containing lead in the
22 State of California, including, but not limited to, *M Concepts Compact Keychain Flashlight, Item*
23 *#39722, MID 0790310 (#0 21331 59203 3).*

24 6. All such flashlights containing lead, shall hereinafter be collectively referred to as
25 the "Products."

26 7. Defendant's failure to warn consumers and/or other individuals in the State of
27 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
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1 *seq.* about their exposure to lead in conjunction with Defendant's distribution, importation,
2 manufacture, sale, and/or offer of the Products for sale is a violation of Proposition 65 and
3 subjects Defendant to enjoinder of such conduct as well as civil penalties for each such
4 violation.

5 8. For Defendant's violation of Proposition 65, plaintiff seeks preliminary injunctive
6 and permanent injunctive relief to compel Defendant to provide purchasers or users of the
7 Products with the required warning regarding the health hazards of lead. (*Cal. Health & Safety*
8 *Code § 25249.7(a).*)

9 9. Plaintiff also seeks civil penalties against Defendant for its violations of
10 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

11 **PARTIES**

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

16 11. Sakar is a person doing business within the meaning of California Health & Safety
17 Code § 25249.11.

18 12. Sakar manufactures, imports, distributes, sells, and/or offers the Products for sale
19 or use in the State of California or implies by its conduct that it manufactures, imports,
20 distributes, and/or offers the Products for sale or use in the State of California.

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

23 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
24 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
25 engage in the process of research, testing, designing, assembling, fabricating, and/or
26 manufacturing, one or more of the Products for sale or use in the State of California.

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

7 **FIRST CAUSE OF ACTION**

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

9 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 23, inclusive.

11 25. In passing Proposition 65, the citizens of the State of California expressed their
12 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that
13 they must be "informed about exposures to chemicals that cause cancer, birth defects, or other
14 reproductive harm."

15 26. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
16 and intentionally expose any individual to a chemical known to the state to cause cancer or
17 reproductive toxicity without first giving clear and reasonable warning to such individual...."
18 Health & Safety Code § 25249.6.

19 27. On September 21, 2011, a 60-Day Notice of Violation, together with the requisite
20 Certificate of Merit (the "Notice"), was provided to Sakar and various public enforcement
21 agencies stating that as a result of DEFENDANTS' manufacture, distribution, importation, sale,
22 and/or offer of the Products for sale, purchasers and users in the State of California were being
23 exposed to lead resulting from the reasonably foreseeable uses of the Products, without the
24 individual purchasers and users first having been provided with a "clear and reasonable warning"
25 regarding such toxic exposures.

26 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
27 and/or offering of the Products for sale or use in violation of California Health & Safety Code §
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1 25249.6 and DEFENDANTS' manufacture, importation, distribution, sale, and/or offering of the
2 Products for sale or use in California in violation of California Health & Safety Code § 25249.6
3 has continued to occur beyond Sakar's receipt of plaintiff's Notice. Plaintiff further alleges and
4 believes that such violations will continue to occur into the future.

5 29. After receipt of the claims asserted in the Notice, the appropriate public
6 enforcement agencies have failed to commence and diligently prosecute a cause of action against
7 DEFENDANTS under Proposition 65.

8 30. The Products manufactured, imported, distributed, sold, and/or offered for sale or
9 use in California by DEFENDANTS contained lead above the allowable state limits.

10 31. DEFENDANTS knew or should have known that the Products manufactured,
11 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
12 lead.

13 32. Lead was present in or on the Products in such a way as to expose individuals to
14 lead through dermal contact and ingestion 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 and workplace exposures to lead, as such exposure is defined by 27
17 California Code of Regulations ("CCR") § 25602(b).

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the Products would expose individuals to lead through dermal contact and ingestion.

20 35. DEFENDANTS intended that such exposures to lead from the reasonably
21 foreseeable use of the Products would occur by their deliberate, non-accidental participation in
22 the manufacture, importation, distribution, and/or offer for sale or use of Products to individuals
23 in the State of California.

24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and/or other individuals in the State of California who were or who could become
26 exposed to lead through dermal contact and ingestion during the reasonably foreseeable use of
27 the Products.

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1 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
2 directly by California voters, individuals exposed to lead through dermal contact and ingestion,
3 resulting from the reasonably foreseeable use of the Products, sold by DEFENDANTS without a
4 "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm, for
5 which harm they have no plain, speedy, or adequate remedy at law.

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

9 39. As a consequence of the above-described acts, California Health & Safety Code
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 **PRAYER FOR RELIEF**

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

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

17 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
18 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing,
19 importing, selling, or offering the Products for sale or use in California, without providing "clear
20 and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with
21 exposures to lead;

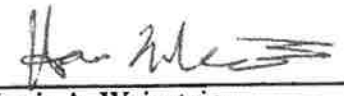
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: October 22, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 

Harris A. Weinstein
Attorneys for Plaintiff
RUSSELL BRIMER