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(ENDORSED)
FILED
SAN MATEO COUNTY

FEB 24 2012

Clerk of the Superior Court
By G. Lacey
DEPUTY CLERK

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN MATEO
13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 TOOLS-R-US, INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. **CIV 512075**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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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
7 warn California citizens about reproductive harms associated with their exposure to lead present
8 in or on certain flashlights that defendant manufactures, imports, distributes, and/or offers for
9 sale to consumers throughout the state 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"), "[n]o person in the
12 course of doing business shall knowingly and intentionally expose any individual to a chemical
13 known to the state to cause cancer or reproductive toxicity without first giving clear and
14 reasonable 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
16 to 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 manufactures, imports, distributes, and/or offers for sale in the state of
21 California flashlights containing lead including, but not limited to, *Max Force Flashlight, #08-*
22 *0286 (#8 56434 00286 4)*. All such flashlights containing lead shall hereinafter be referred to as
23 the "PRODUCTS."

24 6. Defendant's failure to warn consumers and/or other individuals in the State of
25 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
26 *seq.* about their exposure to lead and its potential to cause birth defects and other reproductive
27 harm in conjunction with their distribution, importation, manufacture, and/or sale of the
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1 PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
2 conduct as well as civil penalties for each such violation.

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

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

9 **PARTIES**

10 9. 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; he brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7(d).

14 10. Defendant TOOLS-R-US, INC. ("TOOLS") is a person in the course of doing
15 business within the meaning of California Health & Safety Code § 25249.11.

16 11. Defendant TOOLS manufactures, imports, distributes, and/or offers the
17 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
18 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
19 California.

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

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

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1 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
2 having received a “clear and reasonable warning” regarding such toxic exposures.

3 27. DEFENDANTS have engaged in the manufacture, importation, distribution,
4 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
5 Code § 25249.6, and DEFENDANTS’ manufacture, importation, distribution, and/or offering of
6 the PRODUCTS for sale or use in violation of Health & Safety Code § 25249.6 has continued
7 to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff
8 further alleges and believes that such violations will continue to occur into the future.

9 28. After receipt of the Notice, the appropriate public enforcement agencies have
10 failed to commence and diligently prosecute a cause of action against DEFENDANTS under
11 Proposition 65.

12 29. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
13 use in California by DEFENDANTS contained lead in an amount above the allowable state
14 limits.

15 30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 imported, distributed, and/or offered for sale or use in California contained lead.

17 31. Lead was present in or on the PRODUCTS in such a way as to expose individuals
18 to lead through dermal contact and/or ingestion during the reasonably foreseeable use of the
19 PRODUCTS.

20 32. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
21 continues to cause, consumer exposures to lead, as such exposure is defined by Title 27,
22 California Code of Regulations § 25602(b).

23 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to lead through dermal contact and/or ingestion.

25 34. DEFENDANTS intended that such exposures to lead from the reasonably
26 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
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1 in the manufacture, importation, distribution, and/or offering of the PRODUCTS for sale or use
2 to individuals in the State of California.

3 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the State of California who were, or who could become,
5 exposed to lead through dermal contact and/or ingestion during the reasonably foreseeable use
6 of the PRODUCTS.

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

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

15 38. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

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

23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
25 distributing, and/or offering the PRODUCTS for sale or use in California, without providing
26 “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with
27 exposure 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: February 22, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
RUSSELL BRIMER