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8 Attorneys for Plaintiff  
9 RUSSELL BRIMER

**FILED**

**FEB 15 2013**

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.

LAWSON INDUSTRIES, INC. and DOES 1-  
150,

Defendants.

Case No. h✓1300706

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER, in the public interest of the citizens of the State of California, to enforce the People's right to be informed of the presence of lead, a toxic chemical found in certain consumer motorcycle locks manufactured, distributed and/or otherwise sold by defendants in California.

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

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

4. Significant levels of the LISTED CHEMICAL have been discovered in or on certain materials comprising metal measuring tapes that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of California including, but not limited to, the Lawson Industries Stud & Center With Tip Grip Tip measuring tape (#11040). All such measuring tapes with components containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

10 9. Defendant LAWSON INDUSTRIES, INC. is a person doing business within the  
11 meaning of California Health & Safety Code Section 25249.11.

12 10. Defendant LAWSON INDUSTRIES, INC. manufactures, distributes, and/or  
13 offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it  
14 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
15 California.

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

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

22 13. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
23 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

27 15. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
28 business within the meaning of California Health & Safety Code Section 25249.11.



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, *et*  
7 *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 August 1, 2012, a sixty-day notice of violation ("60-Day Notice"), together  
10 with the requisite Certificate of Merit, was provided to LAWSON INDUSTRIES, INC. stating  
11 that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the  
12 State of California are being exposed to lead resulting from the reasonably foreseeable uses of  
13 the PRODUCTS, without the individual purchasers and users first having been provided with  
14 a "clear and reasonable warning" regarding such toxic exposures.

15 25. DEFENDANTS have engaged in the manufacture, distribution, and/or offering  
16 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section  
17 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for  
18 sale or use in violation of California Health & Safety Code Section 25249.6 is believed to have  
19 continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff  
20 further alleges and believes that such violations are reasonably likely to continue to occur into  
21 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           29. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
2 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
3 25602(b), through dermal contact and/or ingestion during the reasonably foreseeable use of  
4 the PRODUCTS.

5           30. DEFENDANTS knew or should have known that the reasonably foreseeable use  
6 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
7 and/or ingestion.

8           31. DEFENDANTS' participation in the manufacture, distribution and/or offer for  
9 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-  
10 accidental.

11          32. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
12 consumers and/or other individuals in the State of California who were or who could become  
13 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

14          33. Contrary to the express policy and statutory prohibition of Proposition 65,  
15 individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion  
16 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS  
17 without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable  
18 harm, for which harm they have no other plain, speedy or adequate remedy at law.

19          34. As a consequence of the above-described acts, DEFENDANTS are liable for a  
20 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to  
21 California Health & Safety Code Section 25249.7(b).

22          35. As a consequence of the above-described acts, California Health & Safety Code  
23 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
24 DEFENDANTS.

25                                   **PRAYER FOR RELIEF**

26           Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
27 follows:  
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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: February 15, 2013

Respectfully submitted,

13 THE CHANLER GROUP

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15 By: 

16 Gregory M. Sheffer  
17 Attorneys for Plaintiff  
18 RUSSELL BRIMER  
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