

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Ave., Suite 202
5 Mill Valley, CA 94941
6 Telephone: 415.388.0911
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff
9 RUSSELL BRIMER

FILED

JAN - 8 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: *K. Yarborough, Deputy*

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

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 LDI LTD., LLC, ED TUCKER DISTRIBUTOR,
17 INC. and DOES 1-150,

18 Defendants.

Case No. CIV 1300077

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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 certain consumer motorcycle locks
5 manufactured, distributed and/or otherwise sold by defendants in California.

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

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

17 4. Significant levels of the LISTED CHEMICAL have been discovered in or on
18 certain materials comprising the vinyl or other coating of the motorcycle locks that defendants
19 manufacture, distribute, and/or offer for sale to consumers throughout the State of California
20 including, but not limited to, the Bully Locks motorcycle disc lock (#13-2210). All such
21 motorcycle locks with components containing the LISTED CHEMICAL shall hereinafter be
22 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
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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. Defendants LDI LTD., LLC and ED TUCKER DISTRIBUTOR, INC. are each a
11 person doing business within the meaning of California Health & Safety Code Section
12 25249.11.

13 10. Defendants LDI LTD., LLC and ED TUCKER DISTRIBUTOR, INC. manufacture,
14 distribute, and/or offer the PRODUCTS for sale or use in the State of California or implies by
15 its 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 persons
18 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

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

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

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1 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

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

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

11 24. On August 1, 2012, a sixty-day notice of violation ("60-Day Notice"), together
12 with the requisite Certificate of Merit, was provided to LDI LTD., LLC and ED TUCKER
13 DISTRIBUTOR, INC. and various public enforcement agencies stating that as a result of the
14 DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California are
15 being exposed to lead resulting from the reasonably foreseeable uses of the PRODUCTS,
16 without the individual purchasers and users first having been provided with a "clear and
17 reasonable warning" regarding such toxic exposures.

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

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

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

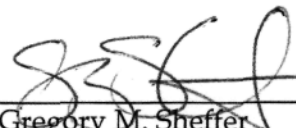
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Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as follows:

1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED CHEMICAL;
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: January 4, 2013

Respectfully submitted,
THE CHANLER GROUP

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
RUSSELL BRIMER