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ENDORSED
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ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By H. Lovett Deputy

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

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 GENESCO INC.; and DOES 1-150, inclusive,

18 Defendants.

19 Case No. RG 10541824

20 **COMPLAINT FOR CIVIL PENALTIES
21 AND INJUNCTIVE RELIEF**

22 *(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, in
3 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 handbags sold in California.

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

9 3. Elevated levels of lead are commonly found in and on certain handbags that
10 defendants manufacture, distribute, and/or offer for sale to consumers and businesses throughout
11 the State of California.

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

17 5. On February 27, 1987, the State listed lead as a chemical known to cause birth
18 defects and other reproductive harm. Lead became subject to the warning requirement one year
19 later and was therefore subject to the "clear and reasonable warning" requirements of Proposition
20 65, beginning on February 27, 1988. (*27 Cal. Code Regs. ("C.C.R.") § 27001(c); Cal. Health &*
21 *Safety Code § 25249.8.*)

22 6. Lead shall be referred to hereinafter as the "Listed Chemical."

23 7. Defendants manufacture, distribute, and/or sell handbags containing lead,
24 including, but not limited to, the *Zippers Bag Red, Style #61661 (#4 08000 41009 4)*. All such
25 handbags containing lead shall hereinafter be collectively referred to as the "Products."

26 8. Defendants' failures to warn consumers and/or other individuals in the State of
27 California about their exposure to the Listed Chemical in conjunction with defendants' sale of
28

1 the 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 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel defendants to provide purchasers or users of the
5 Products with the required warning regarding the health hazards of the Listed Chemical. (*Cal.*
6 *Health & Safety Code § 25249.7(a).*)

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

9 **PARTIES**

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

14 12. Defendant Genesco Inc. ("Genesco"), is a person doing business within the
15 meaning of California Health & Safety Code § 25249.11.

16 13. Defendant Genesco manufactures, distributes, and/or offers the Products for sale
17 or use in the State of California or implies by its conduct that it manufactures, distributes, and/or
18 offers the Products for sale or use in the State of California.

19 14. Defendants DOES 1-50 ("Manufacturer Defendants") are each persons doing
20 business within the meaning of California Health & Safety Code § 25249.11.

21 15. Manufacturer Defendants engage in the process of research, testing, designing,
22 assembling, fabricating, and/or manufacturing, or imply by their conduct that they engage in the
23 process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or
24 more of the Products for sale or use in the State of California.

25 16. Defendants DOES 51-100 ("Distributor Defendants") are each persons doing
26 business within the meaning of California Health & Safety Code § 25249.11.

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

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

6 19. Retailer Defendants offer one or more of 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
10 California Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis
11 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
12 herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

13 21. Genesco, Manufacturer Defendants, Distributor Defendants, and Retailer
14 Defendants shall, where appropriate, collectively be referred to hereinafter as "Defendants."

15 **VENUE AND JURISDICTION**

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

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

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

1 Defendants' purposeful avilment renders the exercise of personal jurisdiction by California
2 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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 24, inclusive.

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

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

14 28. On May 7, 2010, a sixty-day notice of violation, together with the requisite
15 certificate of merit, was provided to Genesco and various public enforcement agencies stating
16 that as a result of the defendant's sales of the Products, purchasers and users in the State of
17 California were being exposed to the Listed Chemical resulting from the reasonably foreseeable
18 uses of the Products, without the individual purchasers and users first having been provided
19 with a "clear and reasonable warning" regarding such toxic exposures.

20 29. Defendants have engaged in the manufacture, distribution, and/or offering of the
21 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 notice 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 notice 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 limits.

3 32. Defendants knew or should have known that the Products manufactured,
4 distributed, and/or offered for sale or use by Defendants in California contained the Listed
5 Chemical.

6 33. The Listed Chemical was present in or on the Products in such a way as to expose
7 individuals to the Listed Chemical through dermal contact and/or ingestion during the
8 reasonably foreseeable use of the Products.

9 34. The normal and reasonably foreseeable use of the Products has caused and
10 continues to cause consumer and occupational exposures to the Listed Chemical, as such
11 exposure is defined by 27 C.C.R. § 25602(b).

12 35. Defendants had knowledge that the normal and reasonably foreseeable use of the
13 Products would expose individuals to the Listed Chemical through dermal contact and/or
14 ingestion.

15 36. Defendants intended that such exposures to the Listed Chemical from the
16 reasonably foreseeable use of the Products would occur by their deliberate, non-accidental
17 participation in the manufacture, distribution, and/or offer for sale or use of Products to
18 individuals in the State of California.

19 37. Defendants failed to provide a “clear and reasonable warning” to those consumers
20 and/or other individuals in the State of California who were or who could become exposed to
21 the Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable
22 use of the Products.

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