

**ENDORSED  
FILED**  
San Francisco County Superior Court

MAY 17 2011

CLERK OF THE COURT  
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Deputy Clerk

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 THE WET SEAL, INC.; and DOES 1-150,  
19 inclusive,

20 Defendants.

Case No. CGC-11-511025

**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  
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 head wraps/head bands  
5 sold in California.

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

10 3. High levels of lead are commonly found in and on head wraps/head bands that  
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
12 California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and  
17 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

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

23 6. Defendants manufacture, distribute, and/or sell head wraps/head bands containing  
24 excessive levels of the LISTED CHEMICAL including, but not limited to, the *2 Strap Stitching*  
25 *Head Wrap, #407901800003*. All such head wraps/head bands containing the LISTED  
26 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

27 7. Defendants’ failure to warn consumers and/or other individuals in the State of  
28 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’

1 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder  
2 of such conduct as well as civil penalties for each such violation.

3 8. 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  
6 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a)*.)

7 9. 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 10. Plaintiff, RUSSELL BRIMER, is a citizen of the County of Alameda in the State  
11 of California who is dedicated to protecting the health of California citizens through the  
12 elimination or reduction of toxic exposures from consumer products, and he brings this action in  
13 the public interest pursuant to California Health & Safety Code § 25249.7(d).

14 11. Defendant, THE WET SEAL, INC. ("WET SEAL"), is a person in the course of  
15 doing business within the meaning of California Health & Safety Code § 25249.11.

16 12. Defendant WET SEAL manufactures, distributes, and/or offers the PRODUCTS  
17 for sale or use in the State of California or implies by its conduct that it manufactures,  
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
27 in the course of doing business within the meaning of California Health & Safety Code §  
28 25249.11.



1 or association that either is a citizen of the State of California, has sufficient minimum contacts  
2 in the State of California, or otherwise purposefully avails itself of the California market.  
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

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

13 26. Proposition 65 states, "[n]o person in the course of doing business shall  
14 knowingly and intentionally expose any individual to a chemical known to the state to cause  
15 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
16 individual...." (*Id.*)

17 27. On or about September 1, 2010, Plaintiff provided a sixty-day notice of violation,  
18 together with the requisite certificate of merit, to WET SEAL and various public enforcement  
19 agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers  
20 and users in the State of California were being exposed to the LISTED CHEMICAL resulting  
21 from the reasonably foreseeable use of the PRODUCTS, without the individual purchasers and  
22 users first having been provided with a "clear and reasonable warning" regarding such toxic  
23 exposure.

24 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
25 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
26 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
27 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
28

1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
2 believes that such violations will continue to occur into the future.

3 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
5 cause of action against DEFENDANTS under Proposition 65.

6 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
7 California by DEFENDANTS contained the LISTED CHEMICAL in an amount above  
8 allowable state limits.

9 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
10 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
11 LISTED CHEMICAL.

12 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
13 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
14 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 exposures to the LISTED CHEMICAL, as such exposure is  
17 defined by 27 CCR § 25602(b).

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
20 and/or ingestion.

21 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
22 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
23 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
24 sale or use to individuals in the State of California.

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



