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ENDORSED  
FILED  
San Francisco County Superior Court

JUN - 1 2011

CLERK OF THE COURT  
BY: DENNIS TOYAMA  
Deputy Clerk

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

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 WINDSOR FASHIONS, INC. and DOES 1-  
17 150,

18 Defendants.

Case No. CGC-11-511371

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

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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 certain of defendants’  
5 belts 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 chemical  
9 known to the state to cause cancer or reproductive toxicity without first giving clear and  
10 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 the  
13 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*  
15 *(c); Cal. Health & Safety Code § 25249.8.*) Lead shall hereinafter be referred to as the  
16 “LISTED CHEMICAL.”

17           4.     Significant levels of the LISTED CHEMICAL have been discovered in or on  
18 belts that defendants manufacture, distribute, and/or offer for sale to consumers throughout the  
19 State of California including, but not limited to, the *Windsor Woven Linked Belt, Brown, JR-*  
20 *05451, #07301-0245 (#4 07301 00584 8)*. All such belts containing the LISTED CHEMICAL  
21 shall hereinafter be referred to as the “PRODUCTS.”

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

25           6.     For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
26 permanent injunctive relief to compel defendants to provide purchasers or users of the  
27 PRODUCTS with the required warning regarding the health hazards of the LISTED  
28 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

3                                   **PARTIES**

4           8. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is  
5 dedicated to protecting the health of California citizens through the elimination or reduction of  
6 toxic exposures from consumer products, and brings this action in the public interest pursuant to  
7 California Health & Safety Code Section 25249.7.

8           9. Defendant WINDSOR FASHIONS, INC. (“WINDSOR FASHIONS”) is a person  
9 doing business within the meaning of California Health & Safety Code Section 25249.11.

10          10. Defendant WINDSOR FASHIONS manufactures, distributes, and/or offers the  
11 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
12 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
13 California.

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

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

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

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

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

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16. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

17. At this time, the true names of Defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

18. WINDSOR FASHIONS, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS".

**VENUE AND JURISDICTION**

19. Venue is proper in the San Francisco County Superior Court, pursuant to Code of Civil Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the County of San Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

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

21. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

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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 the  
4 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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