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Superior Court of California  
Sacramento  
05/27/2011  
v. Guajardo  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2011-00106090**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SACRAMENTO  
10 UNLIMITED CIVIL JURISDICTION

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12 RUSSELL BRIMER,  
13 Plaintiff,  
14 v.  
15 26 INTERNATIONAL, INC.; and DOES 1-  
150, inclusive,  
16 Defendants.

Case No. \_\_\_\_\_

**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 and Lead Compounds ("Lead"), a toxic chemical  
5 found in belts 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 belts that  
8 defendants manufacture, import, distribute, and/or offer for sale to consumers and businesses  
9 throughout the State of California.

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

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

21 5. Defendants manufacture, import, distribute, and/or sell belts containing Lead  
22 including, but not limited to, *Ashley by 26 International Sleeveless Shirt and Belt Set, Olive,*  
23 *Style # 11201-STK.*

24 6. All such belts containing Lead, shall hereinafter be collectively referred to as the  
25 "PRODUCTS."

26 7. Defendants' failure to warn consumers and/or other individuals in the State of  
27 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*  
28 *seq.* about their exposure to Lead in conjunction with Defendants' distribution, importation,

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

3 8. For Defendants' violation 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 Lead. (*Cal. Health &*  
6 *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. RUSSELL BRIMER is a citizen of the State of California who is dedicated to  
11 protecting the health of California citizens through the elimination or reduction of toxic  
12 exposures from consumer and commercial products, and brings this action in the public interest  
13 pursuant to California Health & Safety Code § 25249.7.

14 11. 26 INTERNATIONAL, INC. ("26 INTERNATIONAL") is a person doing  
15 business within the meaning of California Health & Safety Code § 25249.11.

16 12. 26 INTERNATIONAL manufactures, imports, distributes, and/or offers the  
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
18 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of  
19 California.

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
21 doing business within the meaning of California Health & Safety Code § 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, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or  
26 use in the State of California.

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



1 the State of California, or otherwise purposefully avail themselves of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 25, inclusive.

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

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

15 27. On or about November 12, 2010, a sixty-day notice of violation (the "Notice"),  
16 together with the requisite Certificate of Merit, was provided to 26 INTERNATIONAL, and  
17 various public enforcement agencies stating that as a result of DEFENDANTS manufacture  
18 and/or distribution of the PRODUCTS, purchasers and users in the State of California were  
19 being exposed to Lead resulting from the reasonably foreseeable uses of the PRODUCTS,  
20 without the individual purchasers and users first having been provided with a "clear and  
21 reasonable warning" regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or  
23 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
24 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the  
25 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
26 continued to occur beyond 26 INTERNATIONAL's and receipt of the Notice. Plaintiff further  
27 alleges and believes that such violations will continue to occur into the future.

1           29. After receipt of the claims asserted in the Notice, the appropriate public  
2 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
3 DEFENDANTS under Proposition 65.

4           30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or  
5 use in California by DEFENDANTS contained Lead above the allowable state limits.

6           31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained  
8 Lead.

9           32. Lead was present in or on the PRODUCTS in such a way as to expose individuals  
10 to Lead through dermal contact and ingestion during the reasonably foreseeable use of the  
11 PRODUCTS.

12           33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
13 continues to cause consumer and workplace exposures to Lead, as such exposure is defined by  
14 27 CCR § 25602(b).

15           34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
16 the PRODUCTS would expose individuals to Lead through dermal contact and ingestion.

17           35. DEFENDANTS intended that such exposures to Lead from the reasonably  
18 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
19 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to  
20 individuals in the State of California.

21           36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
22 consumers and/or other individuals in the State of California who were or who could become  
23 exposed to Lead through dermal contact and ingestion during the reasonably foreseeable use of  
24 the PRODUCTS.

25           37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
26 directly by California voters, individuals exposed to Lead through dermal contact and ingestion,  
27 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS  
28

1 without a “clear and reasonable warning,” have suffered, and continue to suffer, irreparable  
2 harm, for which harm they have no plain, speedy, or adequate remedy at law.

3 38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
4 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
5 Safety Code § 25249.7(b).

6 39. As a consequence of the above-described acts, California Health & Safety Code  
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

11 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
12 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged  
13 herein;

14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or  
16 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
17 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to Lead;

18 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

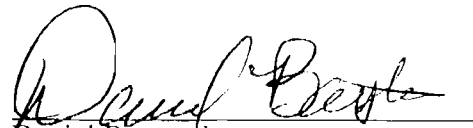
19 4. That the Court grant such other and further relief as may be just and proper.

20  
21 Dated: May 25, 2011

Respectfully Submitted,

22 THE CHANLER GROUP

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25 By:



Daniel Bornstein  
Attorneys for Plaintiff  
RUSSELL BRIMER

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