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ENDORSED
FILED
ALAMEDA COUNTY

JAN 20 2011

CLERK OF THE SUPERIOR COURT

By _____ Deputy

Michelle Cohen

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

RUSSELL BRIMER,

Plaintiff,

v.

LADY CAPTIVA, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No.

R 011556987

**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 belts, handbags, wallets,
5 purses, clutches, totes, and cuffs sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failures to
7 warn California citizens about their exposure to lead, present in or on certain belts, handbags,
8 wallets, purses, clutches, totes and cuffs that defendant manufactures, imports distributes, and/or
9 offer for sale to consumers 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. (Title 27 of the California
19 Code of Regulation (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8.)

20 5. Lead shall be referred to hereinafter as the “LISTED CHEMICAL.”

21 6. Defendant manufactures, imports, distributes, and/or sells belts, handbags,
22 wallets, purses, clutches, totes and cuffs containing lead, including, but not limited to, the *Livia*
23 *Super Skinny Belt, Item #156951*. All such belts, handbags, wallets, purses, clutches, totes and
24 cuffs containing lead shall hereinafter be collectively referred to as the “PRODUCTS.”

25 7. Defendant’s failure to warn consumers and/or other individuals in the State of
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
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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 defendant's violation of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel defendant 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 defendant 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 in the State of California who is
11 dedicated to protecting the health of California citizens through the elimination or reduction of
12 toxic exposures from consumer products, and brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7.

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

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

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

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1 association that either are citizens of the State of California, have sufficient minimum contacts
2 in the State of California, or otherwise purposefully avail themselves 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 24, inclusive.

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

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

16 27. On November 12, 2010, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to LADY CAPTIVA and various public enforcement agencies
18 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
19 the State of California were being exposed to lead resulting from the reasonably foreseeable
20 uses of the PRODUCTS, without the individual purchasers and users first having been provided
21 with a "clear and reasonable warning" regarding such toxic exposures.

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

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

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

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

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

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

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

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

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

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