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10 RUSSELL BRIMER

ENDORSED

2012 OCT 17 3: 52

County of Santa Clara, California

By: \_\_\_\_\_  
Deputy Clerk

10/17/12

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 SANTA CLARA COUNTY

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 THE WHEAT GROUP, INC.; and DOES 1-  
18 150, inclusive,

19 Defendants.

Case No.

112 CV 234450

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(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 backpacks sold in  
5 California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risk of exposure to lead present in and on the backpacks  
8 manufactured, distributed, and offered for sale or use to consumers throughout the state of  
9 California.

10 3. High levels of lead are commonly found in and on the backpacks that defendants  
11 manufacture, distribute, and offer for sale to consumers throughout the state of California.

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

17 5. On February 27, 1987, the state of California identified and listed lead as a  
18 chemical known to cause birth defects and other reproductive harm. Lead became subject to the  
19 “clear and reasonable warning” requirements of Proposition 65 one year later on February 27,  
20 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
21 Lead is referred to hereinafter as the “LISTED CHEMICAL.”

22 6. Defendants manufacture, distribute, and sell backpacks that contain excessive  
23 levels of lead, including, but not limited to, the *Reebok 2Pkt Backpack, RBOF112A* (#8 45301  
24 *06857 7*) and the *Reebok Backpack, RBOF110* (#8 45301 06854 6). All such backpacks  
25 containing lead are referred to collectively hereinafter as “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and other individuals in the state of  
27 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 violation. Health & Safety Code § 25249.7(a)  
3 & (b)(1).

4 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
5 permanent injunctive relief to compel defendants to provide purchasers or users of the  
6 PRODUCTS with the required warning regarding the health hazards of the LISTED  
7 CHEMICAL. Health & Safety Code § 25249.7(a).

8 9. Plaintiff also seeks civil penalties against defendants for their violations of  
9 Proposition 65, as provided by Health and Safety Code section 25249.7(b).

#### 10 PARTIES

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

15 11. Defendant THE WHEAT GROUP, INC. ("WHEAT") is a person in the course of  
16 doing business within the meaning of Health and Safety Code section 25249.11.

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

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
21 persons in the course of doing business within the meaning of Health and Safety Code section  
22 25249.11.

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





1 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
2 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,  
3 and will continue to occur in the future.

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

8 30. The PRODUCTS manufactured, distributed, and offered for sale or use in  
9 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
10 allowable state limits, such that they require a "clear and reasonable" Proposition 65 warning.

11 31. DEFENDANTS knew or should have known that the PRODUCTS they  
12 manufactured, distributed, and offered for sale or use in California contain the LISTED  
13 CHEMICAL.

14 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
15 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

16 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
17 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
18 defined by California Code of Regulations title 27, section 25602(b).

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

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

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

3 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
4 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
5 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold  
6 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to  
7 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

8 38. As a consequence of the above-described acts, DEFENDANTS are liable for a  
9 maximum civil penalty of \$2,500 per day for each violation pursuant to Health and Safety Code  
10 section 25249.7(b).

11 39. As a consequence of the above-described acts, Health and Safety Code section  
12 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

16 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
18 alleged herein;

19 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
21 offering the PRODUCTS for sale or use in California without first providing a “clear and  
22 reasonable warning” as defined by California Code of Regulations title 27, section 25601, as to  
23 the harms associated with exposure the LISTED CHEMICAL;

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

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

Dated: October 11, 2012

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Brian C. Johnson  
Attorneys for Plaintiff  
RUSSELL BRIMER