

ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11
12 RUSSELL BRIMER,

13 Plaintiff,

14 v.

15 FOREVER 21, INC.; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. R G 7 0 4 9 2 9 8 3

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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27 BY FAX
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1 **NATURE OF THE ACTION**

2 1. This complaint is a representative action brought by plaintiff RUSSELL BRIMER in
3 the public interest of the citizens of the State of California, to enforce the People's right to be
4 informed of the presence of the toxic chemical, lead, found in belts sold in California.

5 2. By this complaint, plaintiff seeks to remedy defendants' continuing failures to warn
6 California citizens about their exposure to lead present in certain belts that defendants manufacture,
7 distribute and/or offer for sale to consumers throughout the State of California.

8 3. Excessive levels of lead are commonly found in belts that defendants manufacture,
9 distribute and/or offer for sale to consumers throughout the State of California.

10 4. 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 of
12 doing business shall knowingly and intentionally expose any individual to a chemical known to the
13 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
14 such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

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

20 6. Studies show that pregnant woman subject to high levels of lead exposure face
21 increased risks of spontaneous abortion and still birth. But even at low levels, lead exposure can
22 adversely affect a pregnancy, causing premature birth, shortened gestation, decreased fetal growth
23 and retarded fetal mental development. In a January 1997 report to Congress, United States
24 Department of Health and Human Services ("HHS") noted that the developing nervous system of a
25 fetus is particularly vulnerable to lead toxicity. Studies by HHS and the United States Agency for
26 Toxic Substances and Disease Registry report that the lead in the maternal blood can readily cross the
27 placenta barrier and enter the developing brain and nervous system of the fetus.

1 and/or because DEFENDANTS conducted, and continue to conduct, business in this County with
2 respect to the PRODUCTS.

3 25. The California Superior Court has jurisdiction over this action pursuant to California
4 Constitution, Article VI, § 10, which grants the Superior Court “original jurisdiction in all causes
5 except those given by statute to other trial courts.” The statute under which this action is brought
6 does not specify any other basis of subject matter jurisdiction.

7 26. The California Superior Court has jurisdiction over DEFENDANTS based on
8 PLAINTIFF’s information and good faith belief that each defendant is a person, firm, corporation or
9 association that either is a citizen of the State of California, has sufficient minimum contacts in the
10 State of California, or otherwise purposefully avails itself of the California market. DEFENDANTS’
11 purposeful availment renders the exercise of personal jurisdiction by California courts consistent with
12 traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

15 27. PLAINTIFF realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 26, inclusive.

17 28. The citizens of the State of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
19 (“Proposition 65”) that they must be informed “about exposures to chemicals that cause cancer, birth
20 defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

21 29. Proposition 65 states, “No person in the course of doing business shall knowingly and
22 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
23 toxicity without first giving clear and reasonable warning to such individual....” (*Id.*)

24 30. On September 30, 2009, PLAINTIFF provided a sixty-day notice of violation, together
25 with the requisite certificate of merit, to FOREVER 21 and various public enforcement agencies
26 stating that as a result of DEFENDANTS’ sales of belts, purchasers and users in the State of
27 California were being exposed to lead resulting from the reasonably foreseeable uses of these
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1 products, without the individual purchasers and users first having been provided with a “clear and
2 reasonable warning” regarding such toxic exposures.

3 31. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the
4 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
5 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
6 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
7 DEFENDANTS’ receipt of PLAINTIFF’s sixty-day notice of violation. PLAINTIFF further alleges
8 and believes that such violations will continue to occur into the future.

9 32. After receipt of the claims asserted in the sixty-day notice of violation, the appropriate
10 public enforcement agencies have neither commenced nor diligently prosecuted a cause of action
11 against DEFENDANTS under Proposition 65.

12 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state limits.

14 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
15 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
16 CHEMICAL.

17 35. The LISTED CHEMICAL was present in the PRODUCTS in such a way as to expose
18 individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the
19 reasonably foreseeable use of the PRODUCTS.

20 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
21 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined by
22 27 CCR § 25602(b).

23 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
24 PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact and/or
25 ingestion.

26 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
27 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
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1 participation in the manufacture, distribution and/or offering for sale or use of PRODUCTS to
2 individuals in the State of California.

3 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
4 and/or other individuals in the State of California who were or who could become exposed to the
5 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable use
6 of the PRODUCTS.

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

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

15 42. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

17 43. Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as set forth
18 hereinafter.

19 **PRAYER FOR RELIEF**

20 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS as follows:

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

23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing and/or
25 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
26 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to the LISTED
27 CHEMICAL;

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- 3. That the Court grant PLAINTIFF his reasonable attorney's fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: January 8, 2010

Respectfully Submitted,
CHANLER LAW GROUP

By 
Laralei Paras
Attorneys for Plaintiff
RUSSELL BRIMER