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SAN FRANCISCO COUNTY  
SUPERIOR COURT  
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1 Clifford A. Chanler, State Bar No. 135534  
2 Brian C. Johnson, State Bar No. 235965  
3 Josh Voorhees, State Bar No. 241436  
4 THE CHANLER GROUP  
5 2560 Ninth Street  
6 Parker Plaza, Suite 214  
7 Berkeley, CA 94710-2565  
8 Telephone: (510) 848-8880  
9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff  
11 RUSSELL BRIMER

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN FRANCISCO  
16 UNLIMITED CIVIL JURISDICTION

CGC-11-508220

17 RUSSELL BRIMER,  
18  
19 Plaintiff,

20 v.

21 WICKED FASHIONS, INC.; and DOES 1-  
22 150, inclusive,  
23  
24 Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

1  
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 lead, a toxic chemical found in belts sold in California.

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

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

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

16           5.       On February 27, 1987, California identified and listed lead as a chemical known  
17 to cause birth defects and other reproductive harm. Lead became subject to the “clear and  
18 reasonable warning” requirements of Proposition 65 on February 27, 1988. (27 CCR § 27001  
19 (c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).)

20           6.       Lead shall hereinafter be referred to as the “Listed Chemical.”

21           7.       Defendants manufacture, distribute, and/or sell belts containing excessive levels  
22 of the Listed Chemical including, but not limited to those offered with the *South Pole Jeans Co.*  
23 *Super Blue Denim, #10123-3806 (#8 84888 63039 5)*. All such belts containing excessive levels  
24 of the Listed Chemical shall hereinafter be referred to as the “Products.”

25           8.       Defendants’ failures to warn consumers and/or other individuals in the State of  
26 California about their exposure to the Listed Chemical in conjunction with defendants’ sale of  
27 the Products is a violation of Proposition 65 and subjects defendants to enjoinder of such  
28 conduct as well as civil penalties for each such violation.





1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 – Against All Defendants)**

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

5 26. The citizens of the State of California have expressly stated in Proposition 65 that  
6 they must be informed “about exposures to chemicals that cause cancer, birth defects and other  
7 reproductive harm.” (Cal. Health & Safety Code § 25249.6.)

8 27. Proposition 65 states, “No person in the course of doing business shall knowingly  
9 and intentionally expose any individual to a chemical known to the state to cause cancer or  
10 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
11 (*Ibid.*)

12 28. On October 29, 2010, plaintiff’s sixty-day notice of violation, together with the  
13 requisite certificate of merit, was provided to Wicked Fashions and various public enforcement  
14 agencies stating that as a result of Wicked Fashions’ sales of the Products, purchasers and users  
15 in the State of California were being exposed to the Listed Chemical resulting from the  
16 reasonably foreseeable uses of the Products, without the individual purchasers and users first  
17 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

18 29. Defendants have engaged in the manufacture, distribution, and/or offering of the  
19 Products for sale or use in violation of California Health & Safety Code § 25249.6 and  
20 Defendants’ manufacture, distribution, and/or offering of the Products for sale or use in violation  
21 of California Health & Safety Code § 25249.6 has continued to occur beyond Defendants’  
22 receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and believes that such  
23 violations will continue to occur into the future.

24 30. After receipt of the claims asserted in the sixty-day notice of violation, the  
25 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
26 cause of action against Defendants under Proposition 65.

27 31. The Products manufactured, distributed, and/or offered for sale or use in  
28 California by Defendants contained the Listed Chemical above the allowable state limits.

1           32. Defendants knew or should have known that the Products manufactured,  
2 distributed, and/or offered for sale or use by Defendants in California contained the Listed  
3 Chemical.

4           33. The Listed Chemical was present in or on the Products in such a way as to expose  
5 individuals to the Listed Chemical through dermal contact and/or ingestion during the reasonably  
6 foreseeable use of the Products.

7           34. The normal and reasonably foreseeable use of the Products has caused, and  
8 continues to cause, consumer exposures to the Listed Chemical, as such exposure is defined by  
9 27 CCR § 25602(b).

10           35. Defendants had knowledge that the normal and reasonably foreseeable use of the  
11 Products would expose individuals to the Listed Chemical through dermal contact and/or  
12 ingestion.

13           36. Defendants, and each of them, intended that such exposures to the Listed  
14 Chemical from the reasonably foreseeable use of the Products would occur by their deliberate,  
15 non-accidental participation in the manufacture, distribution, and/or offering of the Products for  
16 sale or use to individuals in the State of California.

17           37. Defendants failed to provide a “clear and reasonable warning” to those consumers  
18 and/or other individuals in the State of California who were or who could become exposed to the  
19 Listed Chemical through dermal contact and/or ingestion during the reasonably foreseeable use  
20 of the Products.

21           38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
22 directly by California voters, individuals exposed to the Listed Chemical through dermal contact  
23 and/or ingestion resulting from the reasonably foreseeable use of the Products, sold by  
24 Defendants without a “clear and reasonable warning,” have suffered, and continue to suffer,  
25 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

26           39. As a consequence of the above-described acts, Defendants, and each of them, are  
27 liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California  
28 Health & Safety Code § 25249.7(b).

