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ECOLOGICAL RIGHTS FOUNDATION  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
(Unlimited Jurisdiction)  
10

11 ECOLOGICAL RIGHTS FOUNDATION, CASE NO. 05-443431

12 Plaintiff,

13 v.

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES

14 ROYAL CABINETS, INC.; ROYAL  
15 INDUSTRIES, INC.; and DOES 1 through  
100 INCLUSIVE

16 Defendants.  
17 \_\_\_\_\_/

TOXIC TORT/ENVIRONMENTAL  
JURY TRIAL REQUESTED  
18  
19

20 ECOLOGICAL RIGHTS FOUNDATION alleges as follows:  
21

22 INTRODUCTION

23 1. This Complaint seeks civil penalties and an injunction to remedy the continuing  
24 failure of Defendants to give clear and reasonable warnings to residents of California, who  
25 handle and/or use furniture which contains leaded glass inserts, leaded mullions, leaded coming  
26 or lead solder (collectively "Leaded glass furniture" or "products"), manufactured, distributed,  
27 marketed and/or sold by Defendants. The handling and/or use of such products causes those  
28 residents to be exposed to lead and lead compounds, chemicals known to the State of California  
to cause cancer, birth defects and other reproductive harm.

1 2. Defendants intend that residents of California handle and/or use Leaded glass  
2 furniture that Defendants manufacture, market, sell and/or distribute. When these products are  
3 handled and/or used in their normally intended manner, they expose people to lead and lead  
4 compounds. In spite of knowing that residents of California were and are being exposed to these  
5 chemicals when they handle and/or use Leaded glass furniture, Defendants did not and do not  
6 provide clear and reasonable warning that these products cause exposure to chemicals known to  
7 cause cancer, birth defects and other reproductive harm.

8 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code section 25249.7  
9 to compel Defendants to bring their business practices into compliance with Health & Safety  
10 Code sections 25249.5 et seq. ("Proposition 65") by providing a clear and reasonable warning to  
11 each individual who has been or in the future may be exposed to the above mentioned toxic  
12 chemicals from the use of Defendants' products.

13 4. In addition to injunctive relief, Plaintiff seeks civil penalties to remedy the  
14 Defendants' continuing failure to provide clear and reasonable warnings to individuals that have  
15 been and continue to be exposed to chemicals known to cause cancer, birth defects and other  
16 reproductive harm.

17 PARTIES

18 5. Plaintiff ECOLOGICAL RIGHTS FOUNDATION ("ERF") is a California non-  
19 profit corporation dedicated to the protection and enhancement of the environment, educating  
20 consumers of toxic exposures from products, and enforcing California and federal environmental  
21 laws. ERF is based in California, and is incorporated under the laws of the State of California.  
22 ERF is a "person" pursuant to Health & Safety Code section 25118. ERF brings this  
23 enforcement action in the public interest pursuant to Health & Safety Code section 25249.7(d).  
24 Residents of California are regularly exposed to lead and lead compounds from Leaded glass  
25 furniture manufactured, distributed, sold and/or marketed by Defendants without a clear and  
26 reasonable Proposition 65.

27 6. Defendant ROYAL CABINET, INC. is a person doing business within the  
28 meaning of Health & Safety Code section 25249.11.



1 Proposition 65 violations to Defendants, to California's Attorney General, to every District  
2 Attorney in the State, and to the City Attorneys of every California city with a population greater  
3 than 750,000. These notices were issued pursuant to, and in compliance with, the requirements  
4 of Health & Safety Code section 25249.7(d) and the statute's implementing regulations regarding  
5 the notice of the violations to be given to certain public enforcement agencies and to the violator.  
6 Attached to the 60-Day Notice Letters sent to each Defendant was a summary of Proposition 65  
7 that was prepared by California's Office of Environmental Health Hazard Assessment. Each 60-  
8 Day Notice Letter Plaintiff sent was accompanied by a Certificate of Service and a Certificate of  
9 Merit. In addition, the 60-Day Notice Letter which Plaintiff sent to California's Attorney  
10 General was accompanied by the information required by California Code of Regulations, title  
11 11, section 3102.

#### 12 VENUE

13 15. Venue is proper in this Court because each of the Defendants markets, sells  
14 and/or distributes their products in and around San Francisco, has violated one or more of the  
15 California laws specified herein in the City and County of San Francisco, and has caused people  
16 to be exposed to lead and lead compounds while those people are physically present in San  
17 Francisco. Liability for Plaintiff's causes of action, or some parts thereof, has accordingly arisen  
18 in San Francisco during the times relevant to this Complaint.

#### 19 FIRST CAUSE OF ACTION 20 (Claim for Injunctive Relief)

21 16. Plaintiff realleges and incorporates by reference the allegations contained in the  
22 preceding paragraphs.

23 17. The People of the State of California have declared by referendum under  
24 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer."

25 18. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates  
26 that persons who, in the course of doing business, knowingly and intentionally expose any  
27 individual to a chemical known to the State of California to cause cancer or birth defects must  
28 first provide a clear and reasonable warning to such individual(s) prior to the exposure.

19. Since at least May 13, 2001, each and every Defendant has engaged in conduct

1 which violates Health and Safety Code section 25249.6 et seq. This conduct includes knowingly  
2 and intentionally exposing to lead and lead compounds, California residents who handle and/or  
3 use Leaded glass furniture. The normally intended use of Leaded glass furniture causes  
4 exposure to lead and lead compounds, which are chemicals known to the State of California to  
5 cause cancer, birth defects and other reproductive harm. Defendants have not provided clear  
6 and reasonable warnings, within the meaning of Health & Safety Code sections 25249.6 and  
7 25249.11.

8 20. At all times relevant to this action, Defendants knew that the Leaded glass  
9 furniture they manufactured, distributed, sold and/or marketed were causing exposures to lead  
10 and lead compounds. Defendants intended that residents of California handle and/or use Leaded  
11 glass furniture in such ways as would result in significant exposures to these chemicals.

12 21. By the above described acts, each Defendant has violated Health & Safety Code  
13 section 25249.6 and are therefore subject to an injunction ordering them to stop violating  
14 Proposition 65 and requiring them to provide warnings to their past customers who purchased  
15 Defendants' products without receiving a clear and reasonable warning.

16 SECOND CAUSE OF ACTION  
17 (Claim for Civil Penalties)

18 22. Plaintiff realleges and incorporates by reference the allegations contained in the  
19 preceding paragraphs..

20 23. By the above described acts, each Defendant is liable and should be liable,  
21 pursuant to Health & Safety Code section 25249.7(b), for a civil penalty of \$2,500.00 per day for  
22 each individual exposed without proper warning to lead and lead compounds from the handling  
23 or use of Defendants' Leaded glass furniture.

24 THIRD CAUSE OF ACTION  
25 Declaratory Relief Regarding Actual and Present Controversy over Defendants' Compliance  
with Proposition 65  
(Code of Civil Procedure section 1060)

26 24. Plaintiff hereby reallege and incorporate by reference the allegations contained in  
27 the preceding paragraphs.

28 25. An actual and present controversy exists between Plaintiff and Defendants as to

1 whether Defendants are fully complying with Proposition 65.

2 26. Plaintiff contends that Defendants, and each of them, have failed to fully comply  
3 with Proposition 65 as alleged in this Complaint.

4 27. Defendants deny each of Plaintiff' contentions.

5 28. Plaintiff seeks a judicial determination and declaration that Defendants have an  
6 obligation to fully comply with Proposition 65.

7 29. Such a declaration is necessary and appropriate at this time in order that Plaintiff  
8 may ascertain the right to have Defendants act in accordance with the obligations under  
9 Proposition 65.

10 30. Unless restrained by this Court, Defendants will continue to violate Proposition  
11 65.

12 31. Said course of conduct by Defendants irreparably harms and will continue to  
13 irreparably harm Plaintiff in that Defendants' actions knowingly and intentionally expose  
14 individuals to a chemical known to the State of California to cause cancer or birth defects  
15 without first providing a clear and reasonable warning to such individuals prior to the exposure.

16 32. Plaintiff have no adequate remedy in the ordinary course of law to obtain relief  
17 from the consequences of said actions by Defendants for the harms alleged herein.

18 PRAYER FOR RELIEF

19 Wherefore, Plaintiff prays for the following relief against Defendants:

20 1. Pursuant to the First Cause of Action, a preliminary and permanent injunction  
21 enjoining, restraining, and ordering all Defendants to comply with the provisions of Section  
22 25249.6 of the California Health & Safety Code;

23 2. Pursuant to the First Cause of Action, a preliminary and permanent injunction  
24 enjoining, restraining, and ordering all Defendants to identify and locate each individual who  
25 purchased Leaded glass furniture from May 13, 2001 to the present and notify all such  
26 individuals that 1) the Leaded glass furniture causes an exposure to lead, a chemical known to  
27 the State of California to cause cancer and birth defects, 2) certain actions can be taken to  
28 minimize that exposure, and 3) they may return any such purchase for a full refund;

1           3.       Pursuant to the Second Cause of Action, that each Defendant be assessed a civil  
2 penalty in an amount equal to \$2,500.00 per day per individual exposed to lead and lead  
3 compounds from May 13, 2004 to the present for violation of Section 25249.6 of the California  
4 Health & Safety Code, as the result of Defendants' manufacturing, distributing, selling and/or  
5 marketing of Leaded glass furniture in California without the proper clear and reasonable  
6 warning;

7           4.       Pursuant to the Third Cause of Action, for a judicial determination and  
8 declaration that Defendants are obliged to comply with Proposition 65.;

9           5.       For costs of the suit incurred herein;

10          6.       For attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure; and

11          7.       For such other relief as this Court deems just and proper.

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13  
14 Dated: July 25, 2005

By \_\_\_\_\_  
Brian Gaffney  
Attorney for Plaintiff  
Environmental Rights Foundation