LEXINGTON LAW GROUP, LLP Mark N. Todzo, State Bar No. 168389 Eric S. Somers, State Bar No. 139050 Lynne R. Saxton, State Bar No. 226210 1627 Irving Street San Francisco, CA 94122 Telephone: (415) 759-4111 Facsimile: (415) 759-4112  Attorneys for Plaintiff CENTER FOR ENVIRONMENTAL HEALTH	AUG 3 1 2005  CORDON PAMASUS GOTA  BY: Deputy Clerk
SUPERIOR COURT OF THE COUNTY OF SAN	
CENTER FOR ENVIRONMENTALHEALTH, ) a non-profit corporation, Plaintiff, v.	Case No. 1980 • 05-444522  COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL PENALTIES AND RESTITUTION
ROSS STORES, INC.; BIG LOTS, INC.; TOYS) "RUS, INC.; TOYSRUS.COM, LLC; WALGREEN COMPANY; and Defendant DOES 1 through 200, inclusive,  Defendants.	Health & Safety Code §25249.6 et sey.; (Other)
	Mark N. Todzo, State Bar No. 168389 Eric S. Somers, State Bar No. 139050 Lynne R. Saxton, State Bar No. 226210 1627 Irving Street San Francisco, CA 94122 Telephone: (415) 759-4111 Facsimile: (415) 759-4112 Attorneys for Plaintiff CENTER FOR ENVIRONMENTAL HEALTH  SUPERIOR COURT OF THE COUNTY OF SAN  CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation,  Plaintiff,  v.  ROSS STORES, INC.; BIG LOTS, INC.; TOYS ) " R US, INC.; TOYSRUS.COM, LLC; WALGREEN COMPANY; and Defendant DOES 1 through 200, inclusive,

Plaintiff Center for Environmental Health, in the public interest, based on information and belief and investigation of counsel, except for **information** based on **personal** knowledge, hereby makes the following allegations:

# **INTRODUCTION**

- 1. This complaint seeks to remedy defendants' continuing failure to warn individuals in California that they are being exposed to lead and lead compounds (collectively, "Lead"), chemicals known to the State of California to cause cancer, birth defects and other reproductive harm. Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale and use of defendants' **soft** food and beverage containers that contain Lead (the "Products"). The Products include, but are not limited to, **soft** lunch boxes, lunch bags and coolers. Consumers, including children, are exposed to Lead when they handle the Products and when they handle or ingest the food and drinks stored inside the Products.
- 2. Under California's Proposition 65, Health and Safety Code §25249.5 et seq., it is unlawful for businesses to knowingly and intentionally expose individuals in California to chemicals known to the State to cause cancer, birth defects or other reproductive harm without providing clear and reasonable warnings to individuals prior to their exposure. Defendants introduce soft food and beverage containers contaminated with significant quantities of Lead directly into the California marketplace, exposing consumers of their Products, many of whom are children, to Lead.
- 3. Despite the fact that defendants expose children and other consumers to Lead, defendants provide no warnings whatsoever about the carcinogenic or reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety Code §25249.6.

## **PARTIES**

4. Plaintiff Center For Environmental Health ("CEH") is a non-profit corporation dedicated to protecting the public from environmental health hazards and toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the State of California. CEH is a "person" within the meaning of Health & Safety Code 525249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety Code \$25249.7(d). CEH is a nationally recognized non-profit environmental advocacy **group** that has

prosecuted a large number of Proposition 65 cases in the public interest. These **cases** have resulted in significant public benefit, including reformulation of toxic products to make them safer and the provision of clear and reasonable **warnings** on hundreds of products sold throughout California. CEH also provides **information** to Californians about the health risks associated with exposure to hazardous substances, where manufacturers and other responsible parties fail to do

- 5. Defendant Ross Stores, Inc. ("Ross") is a person in the course of doing business within the meaning of Health & Safety Code 525249.11. Ross manufactures, distributes and/or sells the Products for sale and use in California.
- 6. Defendant Big Lots, Inc. ("Big Lots") is a person in the course of doing business within the meaning of Health & Safety Code 825249.11. Big Lots manufactures, distributes and/or sells the Products for sale and use in California.
- 7. Defendant Toys "RUs, Inc. ("Toys 'R' Us") is a person in the course of doing business within the meaning of Health & Safety Code \$25249.11. Toys "R" Us manufactures, distributes and/or sells the Products for sale and use in California.
- 8. Defendant Toysrus.com, LLC ("Toysrus.com") is a person in the course of doing business within the meaning of Health & Safety Code 525249.11. Toysrus.com manufactures, distributes and/or sells the Products for sale and use in California.
- 9. Defendant Walgreen Company ("Walgreen") is a person in the course of doing business within the meaning of Health & Safety Code 825249.11. Walgreen manufactures, distributes and/or sells the Products for sale and use in California.
- 10. DOES 1-200 are each a person in the course of doing business within the meaning of Health & Safety Code \$25249.11. DOES 1 through 200 manufacture, distribute and/or sell the Products for sale or use in California.
- 11. The true names of DOES 1 through 200 are **unknown** to **plaintiff** at this time. When their identities are ascertained, the complaint shall be amended to reflect their true names.
- 12. The Defendants identified in paragraphs **5-** 9 and DOES 1 through 200 are collectively **referred** to herein as "Defendants."

## JURISDICTION AND VENUE

- 13. The Court has jurisdiction over this action pursuant to Health & Safety Code 525249.7, which allows enforcement in any court of competent jurisdiction. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except those given by statute to other trial courts." The statutes under which this action is brought do not grant jurisdiction to any other trial court.
- 14. This Court has jurisdiction over the Defendants because each is a business entity that does sufficient business, has sufficient minimum contacts in California or otherwise intentionally avails itself of the California market through the sale, marketing or use of the Products in California and/or by having such other contacts with California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.
- 15. Venue is proper in the San Francisco Superior Court because one or more of the violations arise in the County of San Francisco.

### **BACKGROUND FACTS**

- 16. The People of the State of California have declared by initiative under Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Proposition 65, §1(b).
- 17. To effectuate this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to chemicals listed by the State of California as known to cause cancer, birth defects and other reproductive harm unless the business responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6 states, in pertinent part:

No person in the **course** of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...

**18.** On February 27, 1987, the State of California officially listed Lead as a chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant under three **subcategories**: "developmental reproductive toxicity," which means harm to

the developing fetus, "female reproductive toxicity," which means harm to the female reproductive system, and "male reproductive toxicity," which means harm to the male reproductive system. 22 California Code of Regulations ("CCR) §12000(c). On February 27, 1988, one year after it was listed as a chemical known to cause reproductive toxicity, Lead became subject to the clear and reasonable warning requirement regarding reproductive toxicants under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

- 19. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer. On October 1, 1993, one year **after** they were listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).
- 20. Young children are especially susceptible to the toxic effects of **Lead**. Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts **from** Lead exposure generally occur in children at lower blood Lead levels than in adults. Children absorb and retain more Lead in proportion to their weight than do adults. Young children also show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even small doses received in childhood, over time, can cause adverse health impacts, including but not limited to reproductive toxicity. later in life. For example, in times of physiological stress, such as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby increasing the level of Lead in the blood and increasing the risk of harm to the fetus.
- Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard, DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One recent study on the effect of childhood Lead exposure declared that even the smallest detectable amount of blood Lead levels in children can mean the difference between an A or B grade in school. Lanphear, BP, Dietrich, K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into adulthood and found a sevenfold increase in the risk for developing a reading disability among children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger,

D. Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in Childhood: An I1-Year Follow-up Report"; New England Journal of Medicine; 322:83-88, 1990.

- 22. Defendants' Products contain sufficient quantities of Lead such that consumers, including children, who handle the Products and handle and ingest items stored inside the Products are exposed to Lead through the average use of the Products. These exposures occur through direct ingestion when consumers place items that have been stored in the Products in their mouths, ingestion via hand to mouth contact after consumers touch or handle the Products or items that have been stored in the Products, and dermal absorption directly through the skin when consumers touch or handle the Products or items that have been stored in the Products.
- 23. Any person acting in the public interest has standing to enforce violations of Proposition 65 provided that such person has supplied the requisite public enforcers with a valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action within such time. Health & Safety Code §25249.7(d).
- 24. On May 19, 2005, CEH provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000 and to each of the named Defendants. The May 19,2005 Notice of Violation is referred to herein as the "Notice". In compliance with Health & Safety Code §25249.7(d) and 22 CCR §12903(b), the Notice included the following information: (1) the name and address of the violators; (2) the statute violated; (3) the time period during which violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure to Lead from the Products and (b) Product categories, with a specific non-exclusive example of a Product that is sold and used in violation of Proposition 65 for each named Defendant; and (5) the name of the specific Proposition 65-listed chemical (Lead) that is the subject of the violation described in the Notice.
- 25. CEH also sent a Certificate of Merit for the Notice to the California Attorney General, the District Attorneys of every county in California, the **City Attorneys** of every California city with a population greater than 750,000 **and** to the named Defendants. In

compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the Certificate certified that CEH's counsel: (1) has consulted with one or more persons with relevant and appropriate experience or expertise who reviewed facts, studies or other data regarding the exposures to Lead alleged in the Notice; and (2) based on the information obtained through such consultations, believes that there is a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in the attached Notice. In compliance with Health & Safety Code §25249.7(d) and 11 CCR 53102, the Certificate served on the Attorney General included factual information—provided on a confidential basis—sufficient to establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts, studies or other data reviewed by such persons.

- 26. None of the public prosecutors with the authority to prosecute violations of Proposition 65 has commenced **and/or** is diligently prosecuting a cause of action against the Proposition 65 Defendants under Health & Safety Code §25249.5 et seq. based on the claims asserted in the Notice.
- 27. Defendants both know and intend that individuals, including children, will handle the Products and handle and ingest items stored inside the Products, thus exposing them to Lead.
- 28. The Products are typically made from polyvinyl chloride ("PVC"). The association between PVC and Lead exposure has been widely discussed in the media in recent years, with particular attention given to products made from PVC that are marketed exclusively to children Defendants' Products are also made with pigments, many of which contain Lead. Many of the Defendants' Products are exclusively made for and marketed to children.
- 29. Defendants have been informed of the Lead in their Products by the 60day notice of violation served on them by CEH and from newspaper reports.
- 30. Nevertheless, Defendants continue to expose consumers, including children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.
  - 31. CEH has engaged in good-faith efforts to resolve the claims alleged herein

1	prior to filing this complaint.						
2	32. Any person "violating or threatening to violate" Proposition 65 may be						
3	enjoined in any court of competent jurisdiction. Health & Safety Code tj25249.7. "Threaten to						
	violate" is defined to mean "to create a condition in which there is a substantial probability that						
ı	violation will occur." Health & Safety Code §25249.11(e). Proposition 65 provides for civil						
6	penalties not to exceed \$2,500 per day for each violation of Proposition 65.						
7	FIRST CAUSE OF ACTION						
8	(Violations of the Health & Safety Code \$25249.6)						
9	33. Plaintiff realleges and incorporates by reference as if specifically set forth						
ļ	herein Paragraphs 1 through 32 inclusive.						
11	34. By placing the Products into the <b>stream</b> of commerce, Defendants are a						
12	person in the course of doing business within the meaning of Health & Safety Code §25249.11.						
13	35. Defendants know that average use of the Products will expose users of the						
[   14	Products to Lead. Defendants intend that the Products be used in a manner that results in users						
WWW.E.	of the Products being exposed to Lead contained in the Products.						
16	36. The Defendants have failed, and continue to fail, to provide clear and						
,, [	reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of						
18	the Products.						
19	37. Lead is a chemical listed by the State of California as known to cause						
20	cancer, birth defects and other reproductive harm.						
21	38. By committing the acts alleged above, the Defendants have at all times						
22	relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing						
23	individuals to Lead without first giving clear and reasonable warnings to such individuals						
24	regarding the carcinogenicity and reproductive toxicity of Lead.						
25	Wherefore, Plaintiff prays judgment against the Defendants, as set forth hereafter.						
26	PRAYER FOR RELIEF						
27	Wherefore, Plaintiff prays for judgment against Defendants as follows:						
,,	1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil						

1	penalties against each of the Defendants in the amount of \$2,500 per day for each violation of				
2	Proposition 65 according to proof;				
3	2. That the Court, pursuant to Health & Safety Code §25249.7(a),				
4	preliminarily and permanently enjoin Defendants from offering the Products for sale in				
5	California without providing clear and reasonable warnings, as CEH shall specify in further				
6	application to the Court;				
7	3. That the Court, pursuant to Health & Safety Code §25249.7(a), order				
8	Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of				
9	Products sold by Defendants, as CEH shall specify in further application to the Court;				
10	4. That the Court, pursuant to Code of Civil Procedure \$1021.5 and any other	r			
11	applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and				
12	5. That the Court grant such other and <b>further</b> relief as may be just and	5. That the Court grant such other and <b>further</b> relief as may be just and			
13	proper.				
4					
١5 ·	Dated: August 31, 2005 Respectfully submitted,				
6	LEXINGTON LAW GROUP, LLP				
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9	Nistokri Ny Slodzi Djalisti ff				
20	CENTER <b>FOR</b> ENVIRONMENTAL				
21	HEALTH				
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GORDON PARK-LI, Clerk
WESLEYRAMREZ
Deputy Clerk

Mark N. Todzo, State Bar No. 168389 Lexington Law Group, LLC

NAME. ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)

1627 Irving Street, San Francisco, CA 94122 (415) 759-4111

ATTORNEY(S) FOR'

AMENDMENT TO COMPLAINT	SUPERIOR COL COUNTY OF				CASE NUMBER CGC-05-444522
Center for Environmental F	lealth	VS.	Ross Stores	s, Inc., et. al.	
	Plaintiff(s)				Defendant(s)
FICTITIOUS NAME (SE	EC. 474 C.C.P.]				
Upon filing the com designate said defendant i	nplaint herein, <b>plaintiff(s)</b> be n <b>the comp<sup>l</sup>aint</b> by the fict	eing <b>lg</b> itious r	<b>norant</b> of <b>the</b> f name of:	true name of	a defendant, and having
Doe 5					
and having discovered the	rue name of the said defe	ndant	to be:		
Kmart Corporation					
hereby amends the complaint.	I <b>nt</b> by <b>inserting</b> such true r _	name i	M	ittomey(s) for	
				atomey(s) ioi	prantunto)
INCORRECT NAME (S	EC. 473 (a)(1) C.C.P.]				
Plaintiff(s) h	neving designated a defend	dant <b>ir</b>	the <b>complain</b>	t by the incor	Tect name of
and having discovered the t	rue name of the said defe	ndant	<b>to</b> be	POLDE 199	
hereby <b>amend(s) the</b> compappears in said complaint.	laint by <b>inserting</b> such true	name	in <b>piace</b> and	<b>stead</b> of such	n <b>Incorrect</b> name wherever it
	-		A	ttomey(s) for	Plaintiff(s)
ORDER					
Pmper cause appearing, the	e <b>above</b> amendment to the	e com	olaint i <b>s allow</b> e	id.	
Dated:					
				Judg	e

F101**■** Rev. 12/04

AMENDMENT TO COMPLAINT

**ENDORSED** FILED San Francisco County Superior Court SPACE BELOW FOR COURT USE ONLY

GORDON PARK-LI, Clerk BY\_\_\_\_WESLEY PANELEZ **Debuty Clerk** 

# NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)

Mark N. Todzo, State Bar No. 168389 Lexington Law Group, LLC 1627 Irving Street, San Francisco, CA 94122 (415) 759-4111

ΑI	TORNE	(S) F	ЭR

# AMENDMENT TO SUPERIOR COURT OF CALIFORNIA.

CASE NUMBER

COMPLAINT	<b>COUNTY OF</b>	SAN	FRANCISCO	CGC-05-444522
Center for Environmental H	ealth	VS.	Ross Stores. Inc., et.	al.
	Plaintiis)			Defendant(s)
FICTITIOUS NAME [SE	C. 474 C.C.P.]			
Upon filing the composition designated said defendant in				of a <b>defendant, and having</b>
Doe 6		-		
and having discovered the tr	ue name of the sald defer	ndant t	to be:	
Big Lots Stores, Inc.				
hereby amends the <b>complain</b> appears in <b>said complaint</b> .	nt by <b>inserting</b> such true na	a <b>me</b> ir	n place and stead of suc	h hoorrect name wherever N
			Attorney(s)	for <b>plaintiff(s)</b>
INCORRECT NAME [SE	EC. 473 (a)(1) C.C.P.]			
Plaintiff(s) hi	aving designated a defend	dant <b>in</b>	the complaint by the inc	correct name of
and having discovered the tr	ue name of the said defer	ndant t	to be	
hereby <b>amend(s)</b> the complaint.	aint by inserting such true	name	in place and stead of su	uch Incorrect name wherever it
	_		Attorney(s)	for <b>Plaintiff(s)</b>
ORDER				
Proper cause appearing, the	above amendment to the	comp	plaint is allowed.	
Dated:				
			Ju	idge

F1011 Ray, 12/04

AMENDMENT TO COMPLAINT

ENDORSED FILED San Francisco County Superior Court SPACE BELOW FOR COURT USE ONLY

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GORDON PARK-LI, Clerk **WESLEY RAMIREZ** Deputy Clerk

NAME. ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S) Mark N. Todzo. State Bar No. 168389 Lexington Law Group, LLP 1627 Irving Street, San Francisco, CA 94122 (415) 759-4111

ATTORNEY(S) FOR:

AMENDMENTTO			<b>OF</b> CALIFORNIA,	CASE NUMBER	
COMPLAINT	COUNTY OF	SAI	NFRANCISCO	CGC-05-444522	
Center for Environmental F	lealth	VS.	Ross Stores. Inc., et. al.		
	Plaintiis)			Defendant(s)	
FICTITIOUS NAME (O	CO 474 O A DI				
FICTITIOUS NAME (SE	<del>-</del>				
<b>Upon</b> filling the com designated said defendant i	nplaint <b>herein, plaintiff(s)</b> be in the <b>complaint</b> by the fictif			a detendant, and <b>having</b>	
Doe 7					
and having discovered the t	rue name of the said defen	dant	to be:		
Burlington Coat Factory Wa	arehouse Corporation				
hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.  Attorney(s) for plaintiff(s)					
INCORRECT NAME (S	EC. 473 (a)(1) C.C.P.]			<u>-</u>	
Plaintiff(s) h	naving designated a defend	lant in	the <b>complaint</b> by <b>the incor</b>	rect name of	
and having discovered the t	rue name of the said defer	ndant	to be		
hereby <b>amend(s)</b> the compappears in said complaint.	laint by inserting such true	name	in place and stead of such	n <b>Incorrect</b> name wherever it	
	_		Attorney(s) for	Plaintiff(s)	
ORDER					
Pmper cause appearing. the above amendment to the complaint is allowed.					
Dated:					
			.kudo	A	

## NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)

Mark N. Todzo, State Bar No. 168389 Lexington Law Group, LLP 1627 Irving Street, San Franciso, CA 94122 (415) 759-4111 ENDORSED

STECHELOW OF COURT USE ONLY

San Francisco County Superior Court

JAN 1 7 2005

GORDON PARK-LI, Clerk BY: WESLEY PAMIREZ

ATTORNEY(S) FOR:

AMENDMENT TO COMPLAINT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO CASE NUMBER

CGC-05-444522 Center for Environmental Health Ross Stores, Inc., et. al. Defendant(s) Plaintiff(s) FICTITIOUS NAME [SEC. 474 C.C.P.] Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant, and having designated said defendant in the complaint by the fictitious name of: Doe 8 and having discovered the true name of the said defendant to be: Burlington Coat Factory Warehouse of Hayward, Inc. hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint. Attorney(s) for plaintiff(s) INCORRECT NAME (SEC. 473 (a)(1) C.C.P.] PlaintIff(s) having designated a defendant in the complaint by the incorrect name of and having discovered the true name of the said defendant to be hereby amend(~) the complaint by inserting such the name in place and ~tee of such incorrect name wherever it appears in said complaint. Attorney(s) for Plaintiff(s) **ORDER** Proper cause appearing, the above amendment to the complaint is allowed. Dated: Judge

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