

**ENDORSED**

**SUMMONS ISSUED**  
**FILED**  
San Francisco County Superior Court

JAN 17 2006

GORDON PARK-LI, Clerk

BY: \_\_\_\_\_ Deputy Clerk

**DE LA VEGA-NAVARRO, FOSSE**

CASE MANAGEMENT CONFERENCE SET

JUN 16 2006 09 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

**CGC - 06 - 448599**

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )

Plaintiff, )

v. )

BABYUNIVERSE, INC.; BUY BUY BABY, )  
INC.; and Defendant DOES 1 through 200, )  
inclusive, )

Defendants. )

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

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6 *et seq.*;

(Other)

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

4 **INTRODUCTION**

5 1. This complaint seeks to remedy defendants' continuing failure to warn  
6 individuals in California that they are being exposed to lead and lead compounds (collectively,  
7 "Lead"), chemicals known to the State of California to cause cancer, birth defects and other  
8 reproductive harm. Such exposures have occurred, and continue to occur, through the  
9 manufacture, distribution, sale and use of defendants' soft food and beverage containers that  
10 contain Lead (the "Products"). The Products include, but are not limited to, soft lunch boxes,  
11 soft food bags and baby bottle coolers. Consumers, including children, are exposed to Lead  
12 when they handle the Products and when they handle or ingest the food and drinks stored inside  
13 the Products.

14 2. Under California's Proposition 65, Health and Safety Code §25249.5 *et*  
15 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
16 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without  
17 providing clear and reasonable warnings to individuals prior to their exposure. Defendants  
18 introduce soft food and beverage containers contaminated with significant quantities of Lead  
19 directly into the California marketplace, exposing consumers of their Products, many of whom  
20 are children, to Lead.

21 3. Despite the fact that defendants expose children and other consumers to  
22 Lead, defendants provide no warnings whatsoever about the carcinogenic or reproductive hazards  
23 associated with Lead exposure. Defendants' conduct thus violates the warning provision of  
24 Proposition 65. Health & Safety Code §25249.6.

25 **PARTIES**

26 4. Plaintiff Center For Environmental Health ("CEH") is a non-profit  
27 corporation dedicated to protecting the public from environmental health hazards and toxic  
28 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of



1 not grant jurisdiction to any other trial court.

2 11. This Court has jurisdiction over the Defendants because each is a business  
3 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
4 intentionally avails itself of the California market through the sale, marketing or use of the  
5 Products in California and/or by having such other contacts with California so as to render the  
6 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
7 play and substantial justice.

8 12. Venue is proper in the San Francisco Superior Court because one or more  
9 of the violations arise in the County of San Francisco.

10 **BACKGROUND FACTS**

11 13. The People of the State of California have declared by initiative under  
12 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth  
13 defects, or other reproductive harm.” Proposition 65, §1(b).

14 14. To effectuate this goal, Proposition 65 requires that individuals be  
15 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the  
16 State of California as known to cause cancer, birth defects and other reproductive harm unless  
17 the business responsible for the exposure can prove that it fits within a statutory exemption.  
18 Health & Safety Code §25249.6 states, in pertinent part:

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

23 15. On February 27, 1987, the State of California officially listed Lead as a  
24 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
25 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
26 the developing fetus, “female reproductive toxicity,” which means harm to the female  
27 reproductive system, and “male reproductive toxicity,” which means harm to the male  
28 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

1 became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
2 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

3           16. On October 1, 1992, the State of California officially listed lead and lead  
4 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
5 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
6 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR  
7 §12000(c); Health & Safety Code §25249.10(b).

8           17. Young children are especially susceptible to the toxic effects of Lead.  
9 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from  
10 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children  
11 absorb and retain more Lead in proportion to their weight than do adults. Young children also  
12 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal  
13 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even  
14 small doses received in childhood, over time, can cause adverse health impacts, including but not  
15 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such  
16 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby  
17 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

18           18. There is no safe level of exposure to Lead and even minute amounts of  
19 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard,  
20 DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One recent study on the effect  
21 of childhood Lead exposure declared that even the smallest detectable amount of blood Lead  
22 levels in children can mean the difference between an A or B grade in school. Lanphear, BP,  
23 Dietrich, K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents";  
24 *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into  
25 adulthood and found a sevenfold increase in the risk for developing a reading disability among  
26 children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger,  
27 D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in  
28 Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

1           19. Defendants' Products contain sufficient quantities of Lead such that  
2 consumers, including children, who handle the Products and handle and ingest items stored  
3 inside the Products are exposed to Lead through the average use of the Products. These  
4 exposures occur through direct ingestion when consumers place items that have been stored in  
5 the Products in their mouths, ingestion via hand to mouth contact after consumers touch or  
6 handle the Products or items that have been stored in the Products, and dermal absorption  
7 directly through the skin when consumers touch or handle the Products or items that have been  
8 stored in the Products.

9           20. Any person acting in the public interest has standing to enforce violations  
10 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
11 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
12 action within such time. Health & Safety Code §25249.7(d).

13           21. CEH provided a 60-Day "Notice of Violation of Proposition 65" to the  
14 California Attorney General, the District Attorneys of every county in California, the City  
15 Attorneys of every California city with a population greater than 750,000 and to the named  
16 Defendants. BabyUniverse's 60-Day Notice was dated October 13, 2005 and Buy Buy Baby's  
17 60-Day Notices was dated November 4, 2005. The October 13, 2005 and November 4, 2005  
18 Notices of Violation are referred to herein as the "Notices". In compliance with Health & Safety  
19 Code §25249.7(d) and 22 CCR §12903(b), the Notices included the following information: (1)  
20 the name and address of the violator; (2) the statute violated; (3) the time period during which  
21 violations occurred; (4) specific descriptions of the violations, including (a) the routes of  
22 exposure to Lead from the Products and (b) Product categories, with a specific non-exclusive  
23 example of a Product that is sold and used in violation of Proposition 65; and (5) the name of the  
24 specific Proposition 65-listed chemical (Lead) that is the subject of the violation described in the  
25 Notices.

26           22. CEH also sent a Certificate of Merit for each Notice to the California  
27 Attorney General, the District Attorneys of every county in California, the City Attorneys of  
28 every California city with a population greater than 750,000 and to the named Defendants. In

1 compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the Certificates certified  
2 that CEH's counsel: (1) has consulted with one or more persons with relevant and appropriate  
3 experience or expertise who reviewed facts, studies or other data regarding the exposures to Lead  
4 alleged in the Notices; and (2) based on the information obtained through such consultations,  
5 believes that there is a reasonable and meritorious case for a citizen enforcement action based on  
6 the facts alleged in the attached Notices. In compliance with Health & Safety Code §25249.7(d)  
7 and 11 CCR §3102, the Certificates served on the Attorney General included factual information  
8 – provided on a confidential basis – sufficient to establish the basis for the Certificates, including  
9 the identity of the person(s) consulted by CEH's counsel and the facts, studies or other data  
10 reviewed by such persons.

11           23. None of the public prosecutors with the authority to prosecute violations  
12 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the  
13 Proposition 65 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims  
14 asserted in the Notices.

15           24. Defendants both know and intend that individuals, including children, will  
16 handle the Products and handle and ingest items stored inside the Products, thus exposing them  
17 to Lead.

18           25. The Products are typically made from polyvinyl chloride ("PVC"). The  
19 association between PVC and Lead exposure has been widely discussed in the media in recent  
20 years, with particular attention given to products made from PVC that are marketed exclusively  
21 to children. Defendants' Products are also made with pigments, many of which contain Lead.  
22 Many of the Defendants' Products are exclusively made for and marketed to children.

23           26. Defendants have been informed of the Lead in their Products by the 60-  
24 day notice of violation served on them by CEH and from newspaper reports.

25           27. Nevertheless, Defendants continue to expose consumers, including  
26 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or  
27 reproductive hazards of Lead.

28           28. CEH has engaged in good-faith efforts to resolve the claims alleged herein



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;

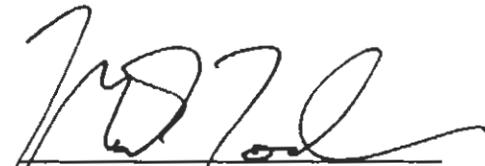
10           4.       That the Court, pursuant to Code of Civil Procedure §1021.5 and any other  
11 applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

12           5.       That the Court utilize its inherent equitable power to grant such other and  
13 further relief as may be just and proper.

14  
15 Dated: January 17, 2006

Respectfully submitted,

LEXINGTON LAW GROUP, LLP

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20 Mark N. Todzo, Esq.  
21 Attorneys for Plaintiff  
22 CENTER FOR ENVIRONMENTAL  
23 HEALTH  
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