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Court Executive Officer
MARIN COUNTY SUPERIOR COURT
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF MARIN

9 MICHAEL RUGGIE,

10 Plaintiff,

11 v.

12 TRANS GLOBE LIGHTING; BEL AIR
LIGHTING, INC.; ARROYO CRAFTSMAN
13 LIGHTING, INC.; LAMPS PLUS, INC.;
LAMPS PLUS - CENTENNIAL, INC.; HOME
14 DEPOT, INC.; HOME DEPOT U.S.A., INC.;
THE HOME DEPOT SUPPLY, INC.;
15 UNIVERSAL ELECTRIC SUPPLY
COMPANY, INC.; CITY LIGHTS LIGHTING
16 SHOWROOM; ACE HARDWARE
CORPORATION; HINKLEY LIGHTING, INC.;
17 QUOIZEL, INC.; WESTINGHOUSE
LIGHTING CORPORATION; LEADCO
18 PRODUCTS, INC.; ROYCE INDUSTRIES,
INC.; L.D. KICHLER COMPANY; LOWE'S
19 HIW, INC.; SEA GULL LIGHTING
PRODUCTS, INC.; SEAGULL LIGHTING
20 PRODUCTS, INC.; SEA GULL LIGHTING
PRODUCTS, LLC; SEAGULL LIGHTING
21 PRODUCTS, INC.; BARNETT, INC.;
INTERMATIC INCORPORATED; QUORUM
22 INTERNATIONAL; TRADE SOURCE
INTERNATIONAL, INC.; CORDELIA
23 LIGHTING, INC.; DESIGNERS FOUNTAIN,
INC.; FORTE LIGHTING, INC.; GOODMAN
24 BUILDING SUPPLY COMPANY; IJK & CO.,
INC.; JIMWAY, INC.; MAXIM LIGHTING
25 INTERNATIONAL, INC.; ORCHARD
SUPPLY HARDWARE CORPORATION;
26 REISFELT VENTURES, INC.; and DOES 1
through 200, inclusive,

27 Defendants.
28

) Case No. CV-061715

) ~~PROPOSED~~ FIRST AMENDED
COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES AND
RESTITUTION

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

) (Other)

1 Plaintiff Michael Ruggie ("Plaintiff"), in the public interest, based on information
2 and belief and investigation of counsel, except for information based on personal knowledge,
3 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' light fixtures (the "Products"). Consumers
10 and workers in California are exposed to Lead when they manufacture, distribute, service, install,
11 sell, use or otherwise handle the Products. For example, the Products are typically made with
12 leaded solder used to hold metal frames containing glass plates together.

13 2. Under California's Proposition 65, Health and Safety Code §25249.5 *et*
14 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
15 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
16 providing clear and reasonable warnings to individuals prior to their exposure. Despite the fact
17 that defendants expose individuals in California to Lead through the manufacture, distribution,
18 sale, and use of the Products, defendants provide no warnings whatsoever about the carcinogenic
19 or reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the
20 warning provision of Proposition 65. Health & Safety Code §25249.6.

21 PARTIES

22 3. Plaintiff Michael Ruggie is a "person" within the meaning of Health &
23 Safety Code §25249.11(a) and brings this enforcement action in the public interest pursuant to
24 Health & Safety Code §25249.7(d).

25 4. Defendant Trans Globe Lighting is a person in the course of doing
26 business within the meaning of Health & Safety Code §25249.11. Trans Globe Lighting
27 manufactures, distributes and/or sells the Products for sale and use in California.

28 5. Defendant Bel Air Lighting, Inc. is a person in the course of doing
business within the meaning of Health & Safety Code §25249.11. Bel Air Lighting, Inc.
manufactures, distributes and/or sells the Products for sale and use in California.

1 6. Defendant Arroyo Craftsman Lighting, Inc. is a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11. Arroyo Craftsman
3 Lighting, Inc. manufactures, distributes and/or sells the Products for sale and use in California.

4 7. Defendant Lamps Plus, Inc. is a person in the course of doing business
5 within the meaning of Health & Safety Code §25249.11. Lamps Plus, Inc. manufactures,
6 distributes and/or sells the Products for sale and use in California.

7 8. Defendant Lamps Plus - Centennial, Inc. is a person in the course of doing
8 business within the meaning of Health & Safety Code §25249.11. Lamps Plus - Centennial, Inc.
9 manufactures, distributes and/or sells the Products for sale and use in California.

10 9. Defendant Home Depot, Inc. is a person in the course of doing business
11 within the meaning of Health & Safety Code §25249.11. Home Depot, Inc. manufactures,
12 distributes and/or sells the Products for sale and use in California.

13 10. Defendant Home Depot U.S.A., Inc. is a person in the course of doing
14 business within the meaning of Health & Safety Code §25249.11. Home Depot U.S.A., Inc.
15 manufactures, distributes and/or sells the Products for sale and use in California.

16 11. Defendant The Home Depot Supply, Inc. is a person in the course of doing
17 business within the meaning of Health & Safety Code §25249.11. The Home Depot Supply, Inc.
18 manufactures, distributes and/or sells the Products for sale and use in California.

19 12. Defendant Universal Electric Supply Company, Inc. is a person in the
20 course of doing business within the meaning of Health & Safety Code §25249.11. Universal
21 Electric Supply Company, Inc. manufactures, distributes and/or sells the Products for sale and
22 use in California.

23 13. Defendant City Lights Lighting Showroom is a person in the course of
24 doing business within the meaning of Health & Safety Code §25249.11. City Lights Lighting
25 Showroom manufactures, distributes and/or sells the Products for sale and use in California.

26 14. Defendant Ace Hardware Corporation is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Ace Hardware Corporation
28 manufactures, distributes and/or sells the Products for sale and use in California.

 15. Defendant Hinkley Lighting, Inc. is a person in the course of doing
business within the meaning of Health & Safety Code §25249.11. Hinkley Lighting, Inc.

1 manufactures, distributes and/or sells the Products for sale and use in California.

2 16. Defendant Quoizel, Inc. is a person in the course of doing business within
3 the meaning of Health & Safety Code §25249.11. Quoizel, Inc. manufactures, distributes and/or
4 sells the Products for sale and use in California.

5 17. Defendant Westinghouse Lighting Corporation is a person in the course of
6 doing business within the meaning of Health & Safety Code §25249.11. Westinghouse Lighting
7 Corporation manufactures, distributes and/or sells the Products for sale and use in California.

8 18. Defendant Leadco Products, Inc. is a person in the course of doing
9 business within the meaning of Health & Safety Code §25249.11. Leadco Products, Inc.
10 manufactures, distributes and/or sells the Products for sale and use in California.

11 19. Defendant Royce Industries, Inc. is a person in the course of doing
12 business within the meaning of Health & Safety Code §25249.11. Royce Industries, Inc.
13 manufactures, distributes and/or sells the Products for sale and use in California.

14 20. Defendant L.D. Kichler Company is a person in the course of doing
15 business within the meaning of Health & Safety Code §25249.11. L.D. Kichler Company
16 manufactures, distributes and/or sells the Products for sale and use in California.

17 21. Defendant Lowe's HIW, Inc. is a person in the course of doing business
18 within the meaning of Health & Safety Code §25249.11. Lowe's HIW, Inc. manufactures,
19 distributes and/or sells the Products for sale and use in California.

20 22. Defendant Sea Gull Lighting Products, Inc. is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Sea Gull Lighting
22 Products, Inc. manufactures, distributes and/or sells the Products for sale and use in California.

23 23. Defendant Seagull Lighting Products, Inc. is a person in the course of
24 doing business within the meaning of Health & Safety Code §25249.11. Seagull Lighting
25 Products, Inc. manufactures, distributes and/or sells the Products for sale and use in California.

26 24. Defendant Sea Gull Lighting Products, LLC is a person in the course of
27 doing business within the meaning of Health & Safety Code §25249.11. Sea Gull Lighting
28 Products, LLC manufactures, distributes and/or sells the Products for sale and use in California.

25. Defendant Seagull Lighting Products, LLC is a person in the course of
doing business within the meaning of Health & Safety Code §25249.11. Seagull Lighting

1 Products, LLC manufactures, distributes and/or sells the Products for sale and use in California.

2 26. Defendant Barnett, Inc. is a person in the course of doing business within
3 the meaning of Health & Safety Code §25249.11. Barnett, Inc. manufactures, distributes and/or
4 sells the Products for sale and use in California.

5 27. Defendant Intermatic, Incorporated is a person in the course of doing
6 business within the meaning of Health & Safety Code §25249.11. Intermatic, Incorporated
7 manufactures, distributes and/or sells the Products for sale and use in California.

8 28. Defendant Quorum International is a person in the course of doing
9 business within the meaning of Health & Safety Code §25249.11. Quorum International
10 manufactures, distributes and/or sells the Products for sale and use in California.

11 29. Defendant Trade Source International, Inc. is a person in the course of
12 doing business within the meaning of Health & Safety Code §25249.11. Trade Source
13 International, Inc. manufactures, distributes and/or sells the Products for sale and use in
14 California.

15 30. Defendant Cordelia Lighting, Inc. is a person in the course of doing
16 business within the meaning of Health & Safety Code §25249.11. Cordelia Lighting, Inc.
17 manufactures, distributes and/or sells the Products for sale and use in California.

18 31. Defendant Designers Fountain, Inc. is a person in the course of doing
19 business within the meaning of Health & Safety Code §25249.11. Designers Fountain, Inc.
20 manufactures, distributes and/or sells the Products for sale and use in California.

21 32. Defendant Forte Lighting, Inc. is a person in the course of doing business
22 within the meaning of Health & Safety Code §25249.11. Forte Lighting, Inc. manufactures,
23 distributes and/or sells the Products for sale and use in California.

24 33. Defendant Goodman Building Supply Company is a person in the course
25 of doing business within the meaning of Health & Safety Code §25249.11. Goodman Building
26 Supply Company manufactures, distributes and/or sells the Products for sale and use in
27 California.

28 34. Defendant IJK & Co., Inc. is a person in the course of doing business
within the meaning of Health & Safety Code §25249.11. IJK & Co., Inc. manufactures,
distributes and/or sells the Products for sale and use in California.

1 California Superior Court has jurisdiction over this action pursuant to California Constitution
2 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except
3 those given by statute to other trial courts." The statutes under which this action is brought do
4 not grant jurisdiction to any other trial court.

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

11 45. Venue is proper in the Marin County Superior Court because one or more of
12 the violations arise in the County of Marin.

13 **BACKGROUND FACTS**

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

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

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

26 48. On February 27, 1987, the State of California officially listed Lead as a
27 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
28 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,

1 1988, one year after it was listed as a chemical known to cause reproductive toxicity, Lead
2 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
3 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

4 49. On October 1, 1992, the State of California officially listed lead and lead
5 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
6 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
7 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
8 §12000(c); Health & Safety Code §25249.10(b).

9 50. There is no safe level of exposure to Lead and even minute amounts of
10 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard,
11 DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987.

12 51. Defendants' Products contain sufficient quantities of Lead such that
13 individuals who handle the Products are exposed to Lead through the average use of the Product.
14 Consumer exposures take place when consumers use, install, service or otherwise touch or
15 handle the Products. Occupational exposures occur when workers manufacture, assemble, ship,
16 display, sell, store, handle or otherwise come into contact with the Products.

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

21 53. On or after December 19, 2005, Plaintiff provided a 60-Day Notice of
22 Violation of Proposition 65 (the "Notices") to the California Attorney General, the District
23 Attorneys of every county in California, the City Attorneys of every California city with a
24 population greater than 750,000 and to each of the named Defendants. The Notices contained the
25 information required by Health & Safety Code §25249.7(d) and 22 Cal. Code Regs. §12903(b).

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

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

11 55. 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
13 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims asserted in the
14 Notices.

15 56. Defendants both know and intend that individuals will handle the
16 Products, thus exposing them to Lead.

17 57. The Products typically use un-coated solder to hold metal parts together.
18 This solder is often composed of substantial quantities of Lead.

19 58. Defendants have been informed of the Lead in their Products by the
20 Notices served on them by Plaintiff.

21 59. Nevertheless, Defendants continue to expose individuals to Lead without
22 prior clear and reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.

23 60. Plaintiff has engaged in good-faith efforts to resolve the claims alleged
24 herein prior to filing this complaint.

25 61. Any person “violating or threatening to violate” Proposition 65 may be
26 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
27 violate” is defined to mean “to create a condition in which there is a substantial probability that a
28 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil

1 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

2 **FIRST CAUSE OF ACTION**
3 **(Violations of the Health & Safety Code §25249.6 - Consumer Exposures)**
4 **(Against All Defendants)**

5 62. Plaintiff realleges and incorporates by reference as if specifically set forth
6 herein Paragraphs 1 through 61 inclusive.

7 63. By placing the Products into the stream of commerce, Defendants persons
8 in the course of doing business within the meaning of Health & Safety Code §25249.11.

9 64. Defendants know that the Products will expose consumers to Lead.
10 Defendants intend that the Products be handled and used in a manner that results in consumers
11 being exposed to Lead contained in the Products.

12 65. The Defendants have failed, and continue to fail, to provide clear and
13 reasonable warnings regarding the carcinogenicity and reproductive toxicity of the Lead
14 contained in the Products.

15 66. Lead is a chemical listed by the State of California as known to cause
16 cancer, birth defects and other reproductive harm.

17 67. By committing the acts alleged above, the Defendants have at all times
18 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
19 individuals to Lead without first giving clear and reasonable warnings to such individuals
20 regarding the carcinogenicity and reproductive toxicity of Lead.

21 Wherefore, Plaintiff prays judgment against the Defendants, as set forth hereafter.

22 **SECOND CAUSE OF ACTION**
23 **(Violations of the Health & Safety Code §25249.6 - Occupational Exposures)**
24 **(Against Defendants Trans Globe Lighting; Bel Air Lighting, Inc.; Arroyo Craftsman**
25 **Lighting, Inc.; Lamps Plus, Inc.; Lamps Plus - Centennial, Inc.; Home Depot, Inc.; Home**
26 **Depot U.S.A., Inc.; The Home Depot Supply, Inc.; Universal Electric Supply Company,**
27 **Inc.; City Lights Lighting Showroom; Ace Hardware Corporation; Hinkley Lighting, Inc.;**
28 **Lowe's HIW, Inc.; Cordelia Lighting, Inc.; Designers Fountain, Inc.; Forte Lighting, Inc.;**
Goodman Building Supply Company; IJK & Co., Inc.; Jimway, Inc.; Maxim Lighting
International, Inc.; Orchard Supply Hardware Corporation; Reisfelt Ventures, Inc., and
Does 101-200)

68. Plaintiff realleges and incorporates by reference as if specifically set forth
herein Paragraphs 1 through 67 inclusive.

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2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin Defendants from offering the Products for sale in California without providing clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by Defendants, as Plaintiff shall specify in further application to the Court;

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

5. That the Court grant such other and further relief as may be just and proper.

Dated: ~~July~~ ^{September} 13, 2006

Respectfully submitted,
LEXINGTON LAW GROUP, LLP


Howard Hirsch, Esq.
Attorneys for Plaintiff
MICHAEL RUGGIE