

1 LEXINGTON LAW GROUP, LLP
Eric S. Somers, State Bar No. 139050
2 Mark N. Todzo, State Bar No. 168389
Howard Hirsch, State Bar No. 213209
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 MICHAEL RUGGIE

FILED

APR 24 2006

MARIN COUNTY SUPERIOR COURT
BY: L. B. RYAN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

12 MICHAEL RUGGIE,)

13 Plaintiff,)

14 v.)

15)
16 TRANS GLOBE LIGHTING; BEL AIR)
LIGHTING, INC.; ARROYO CRAFTSMAN)
17 LIGHTING, INC.; LAMPS PLUS, INC.;)
LAMPS PLUS - CENTENNIAL, INC.; HOME)
18 DEPOT, INC.; HOME DEPOT U.S.A., INC.;)
THE HOME DEPOT SUPPLY, INC.;)
19 UNIVERSAL ELECTRIC SUPPLY)
COMPANY, INC.; BAY LIGHTING &)
20 DESIGN, INC.; CITY LIGHTS LIGHTING)
SHOWROOM; PASTIME HARDWARE; ACE)
21 HARDWARE CORPORATION; HINKLEY)
LIGHTING, INC.; QUOIZEL, INC.;)
22 WESTINGHOUSE LIGHTING)
CORPORATION; LEADCO PRODUCTS,)
23 INC.; ROYCE INDUSTRIES, INC.; L.D.)
KICHLER COMPANY; LOWE'S HIW, INC.;)
24 LOWE'S COMPANIES, INC.; LOWE'S HOME)
CENTERS, INC., and Defendant DOES 1)
25 through 200, inclusive,)

26 Defendants.)
27 _____)
28

Case No. CV 061715

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

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

 15. Defendant Pastime Hardware is a person in the course of doing business
 within the meaning of Health & Safety Code §25249.11. Pastime Hardware manufactures,

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

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

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

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

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

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

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

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

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

26 24. Defendant Lowe's Companies, Inc. is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Lowe's Companies, Inc.
28 manufactures, distributes and/or sells the Products for sale and use in California.

 25. Defendant Lowe's Home Centers, Inc. is a person in the course of doing
business within the meaning of Health & Safety Code §25249.11. Lowe's Home Centers, Inc.

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

2 26. DOES 1-100 are each a person in the course of doing business within the
3 meaning of Health & Safety Code §25249.11. DOES 1 through 100 manufacture, distribute
4 and/or sell the Products for sale or use in California.

5 27. DOES 101-200 are each a person in the course of doing business within
6 the meaning of Health & Safety Code §25249.11. DOES 101 through 200 manufacture,
7 distribute and/or sell the Products for sale or use in California. DOES 101 through 200 have
8 workplaces in California, and are therefore liable for both consumer and occupational exposures
9 under Proposition 65.

10 28. The true names of DOES 1 through 200 are unknown to plaintiff at this
11 time. When their identities are ascertained, the complaint shall be amended to reflect their true
12 names.

13 29. The Defendants identified in paragraphs 4-25 and DOES 1 through 200 are
14 collectively referred to herein as "Defendants."

15 JURISDICTION AND VENUE

16 30. The Court has jurisdiction over this action pursuant to Health & Safety
17 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
18 California Superior Court has jurisdiction over this action pursuant to California Constitution
19 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except
20 those given by statute to other trial courts." The statutes under which this action is brought do
21 not grant jurisdiction to any other trial court.

22 31. This Court has jurisdiction over the Defendants because each is a business
23 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
24 intentionally avails itself of the California market through the manufacture, sale, marketing or
25 use of the Products in California and/or has such other contacts with California so as to render
26 the exercise of jurisdiction over it by the California courts consistent with traditional notions of
27 fair play and substantial justice.

28 32. Venue is proper in the Marin County Superior Court because one or more of
the violations arise in the County of Marin.

////

1 **BACKGROUND FACTS**

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

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

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

12 35. On February 27, 1987, the State of California officially listed Lead as a
13 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
14 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to
15 the developing fetus, "female reproductive toxicity," which means harm to the female
16 reproductive system, and "male reproductive toxicity," which means harm to the male
17 reproductive system. 22 California Code of Regulations ("CCR") §12000(c). On February 27,
18 1988, one year after it was listed as a chemical known to cause reproductive toxicity, Lead
19 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).

20 36. On October 1, 1992, the State of California officially listed lead and lead
21 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
22 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
23 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
24 §12000(c); Health & Safety Code §25249.10(b).

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

28 38. Defendants' Products contain sufficient quantities of Lead such that

1 individuals who handle the Products are exposed to Lead through the average use of the Product.
2 Consumer exposures take place when consumers use, install, service or otherwise touch or
3 handle the Products. Occupational exposures occur when workers manufacture, assemble, ship,
4 display, sell, store, handle or otherwise come into contact with the Products.

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

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

14 41. Plaintiff also sent a Certificate of Merit for each of the Notices to the
15 California Attorney General, the District Attorneys of every county in California, the City
16 Attorneys of every California city with a population greater than 750,000 and to the named
17 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the
18 Certificate certified that Plaintiff's counsel: (1) has consulted with one or more persons with
19 relevant and appropriate experience or expertise who reviewed facts, studies or other data
20 regarding the exposures to Lead alleged in the Notices; and (2) based on the information obtained
21 through such consultations, believes that there is a reasonable and meritorious case for a citizen
22 enforcement action based on the facts alleged in the Notices. In compliance with Health &
23 Safety Code §25249.7(d) and 11 CCR §3102, the Certificate served on the Attorney General
24 included factual information – provided on a confidential basis – sufficient to establish the basis
25 for the Certificate, including the identity of the person(s) consulted by Plaintiff's counsel and the
26 facts, studies or other data reviewed by such persons.

27 42. None of the public prosecutors with the authority to prosecute violations
28 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against

1 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims asserted in the
2 Notices.

3 43. Defendants both know and intend that individuals will handle the
4 Products, thus exposing them to Lead.

5 44. The Products typically use un-coated solder to hold metal parts together.
6 This solder is often composed of substantial quantities of Lead.

7 45. Defendants have been informed of the Lead in their Products by the
8 Notices served on them by Plaintiff.

9 46. Nevertheless, Defendants continue to expose individuals to Lead without
10 prior clear and reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.

11 47. Plaintiff has engaged in good-faith efforts to resolve the claims alleged
12 herein prior to filing this complaint.

13 48. Any person “violating or threatening to violate” Proposition 65 may be
14 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
15 violate” is defined to mean “to create a condition in which there is a substantial probability that a
16 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
17 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

18 **FIRST CAUSE OF ACTION**
19 **(Violations of the Health & Safety Code §25249.6 - Consumer Exposures)**
20 **(Against All Defendants)**

21 49. Plaintiff realleges and incorporates by reference as if specifically set forth
22 herein Paragraphs 1 through 48 inclusive.

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

25 51. Defendants know that the Products will expose consumers to Lead.
26 Defendants intend that the Products be handled and used in a manner that results in consumers
27 being exposed to Lead contained in the Products.

28 52. The Defendants have failed, and continue to fail, to provide clear and
reasonable warnings regarding the carcinogenicity and reproductive toxicity of the Lead

1 contained in the Products.

2 53. Lead is a chemical listed by the State of California as known to cause
3 cancer, birth defects and other reproductive harm.

4 54. By committing the acts alleged above, the Defendants have at all times
5 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
6 individuals to Lead without first giving clear and reasonable warnings to such individuals
7 regarding the carcinogenicity and reproductive toxicity of Lead.

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

9 **SECOND CAUSE OF ACTION**
10 **(Violations of the Health & Safety Code §25249.6 - Occupational Exposures)**
11 **(Against Defendants Trans Globe Lighting; Bel Air Lighting, Inc.; Arroyo Craftsman**
12 **Lighting, Inc.; Lamps Plus, Inc.; Lamps Plus - Centennial, Inc.; Home Depot, Inc.; Home**
13 **Depot U.S.A., Inc.; The Home Depot Supply, Inc.; Universal Electric Supply Company,**
14 **Inc.; Bay Lighting & Design, Inc.; City Lights Lighting Showroom; Pastime Hardware;**
15 **Ace Hardware Corporation; Hinkley Lighting, Inc.; Lowe's HIW, Inc.; Lowe's Home**
16 **Centers, Inc.; Lowe's Companies, Inc.; Does 101-200)**

17 55. Plaintiff realleges and incorporates by reference as if specifically set forth
18 herein Paragraphs 1 through 54 inclusive.

19 56. By placing the Products into the stream of commerce, Defendants are
20 persons in the course of doing business within the meaning of Health & Safety Code §25249.11.

21 57. Defendants Trans Globe Lighting; Bel Air Lighting, Inc.; Arroyo
22 Craftsman Lighting, Inc.; Lamps Plus, Inc.; Lamps Plus - Centennial, Inc.; Home Depot, Inc.;
23 Home Depot U.S.A., Inc.; The Home Depot Supply, Inc.; Universal Electric Supply Company,
24 Inc.; Bay Lighting & Design, Inc.; City Lights Lighting Showroom; Pastime Hardware; Ace
25 Hardware Corporation; Hinkley Lighting, Inc.; Lowe's HIW, Inc.; Lowe's Home Centers, Inc.;
26 Lowe's Companies, Inc. and Does 101-200 (collectively, "Occupational Exposure Defendants")
27 know that the Products will expose employees to Lead. The Occupational Exposure Defendants
28 intend that the Products be handled and used in a manner that results in employees being exposed
to Lead contained in the Products.

58. The Occupational Exposure Defendants have failed, and continue to fail,
to provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity

1 of the Lead in the Products.

2 59. Lead is a chemical listed by the State of California as known to cause
3 cancer, birth defects and other reproductive harm.

4 60. By committing the acts alleged above, the Occupational Exposure
5 Defendants have at all times relevant to this complaint violated Proposition 65 by knowingly and
6 intentionally exposing individuals to Lead without first giving clear and reasonable warnings to
7 such individuals regarding the carcinogenicity and reproductive toxicity of Lead.

8 Wherefore, Plaintiff prays judgment against the Occupational Exposure
9 Defendants, as set forth hereafter.

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for judgment against Defendants as follows:

12 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
13 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
14 Proposition 65 according to proof;

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

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

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

24 ////

25 ////

26 ////

27 ////

28 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: April 24, 2006

Respectfully submitted,
LEXINGTON LAW GROUP, LLP



Howard Hirsch, Esq.
Attorneys for Plaintiff
MICHAEL RUGGIE