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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CASE MANAGEMENT CONFERENCE SET

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6 CENTER FOR ENVIRONMENTAL HEALTH NOV 21 2008 - 9⁰⁰AM

7 DEPARTMENT 212

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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

080-33-476552
Case No. _____

14 Plaintiff,)

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

15 v.)

Health & Safety Code §25249.6 et seq.

16 A.D. SUTTON & SONS, INC.; ACCESSORY)
17 NETWORK GROUP, INC.; E.S. ORIGINALS,)
18 INC.; GLOBAL DESIGNS CONCEPTS, INC.;)
LEGENT INTERNATIONAL LTD.; and)
Defendant DOES 1 through 200, inclusive,)

(Other)

20 Defendants.)

21 FAXED

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 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 and birth defects or other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of Defendants' backpacks (the "Products"). Consumers,
10 including children, are exposed to Lead when they use the Products.

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

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

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
23 non-profit corporation dedicated to protecting the public from environmental health hazards and
24 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
25 State of California. CEH is a "person" within the meaning of Health & Safety Code
26 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
27 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
28 group that has prosecuted a large number of Proposition 65 cases in the public interest. These

1 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
2 California Superior Court has jurisdiction over this action pursuant to California Constitution
3 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except
4 those given by statute to other trial courts." The statutes under which this action is brought do
5 not grant jurisdiction to any other trial court.

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

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

14 BACKGROUND FACTS

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

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

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

26 18. 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

1 the developing fetus, "female reproductive toxicity," which means harm to the female
2 reproductive system, and "male reproductive toxicity," which means harm to the male
3 reproductive system. 22 California Code of Regulations ("CCR") §12000(c). On February 27,
4 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
5 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
6 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

7 19. On October 1, 1992, the State of California officially listed lead and lead
8 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
9 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
10 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
11 §12000(c); Health & Safety Code §25249.10(b).

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

22 21. There is no safe level of exposure to Lead and even minute amounts of
23 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard,
24 DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the effect of
25 childhood Lead exposure declared that even the smallest detectable amount of blood Lead levels
26 in children can mean the difference between an A or B grade in school. Lanphear, BP, Dietrich,
27 K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents";
28 *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into

1 adulthood and found a sevenfold increase in the risk for developing a reading disability among
2 children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger,
3 D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in
4 Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

5 22. Defendants' Products contain sufficient quantities of Lead such that
6 consumers, including children, who handle the Products and handle and ingest items stored
7 inside the Products are exposed to Lead through the average use of the Products. The route of
8 exposure for the violations is direct ingestion when consumers, including children, place items
9 that have been stored in the Products in their mouths; ingestion via hand to mouth contact after
10 consumers, including children, touch or handle the Products or items that have been stored in the
11 Products; and dermal absorption directly through the skin when consumers, including children,
12 touch or handle the Products or items that have been stored in the Products.

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

17 24. More than sixty days prior to naming each Defendant in this lawsuit, CEH
18 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
19 the District Attorneys of every county in California, the City Attorneys of every California city
20 with a population greater than 750,000 and to each of the named Defendants. In compliance with
21 Health & Safety Code §25249.7(d) and 22 CCR §12903(b), each of the Notices included the
22 following information: (1) the name and address of the violators; (2) the statute violated; (3) the
23 time period during which violations occurred; (4) specific descriptions of the violations,
24 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
25 Products sold and used in violation of Proposition 65; and (5) the name of the specific
26 Proposition 65-listed chemical (Lead) that is the subject of the violations described in each of the
27 Notices.

28 25. CEH also sent a Certificate of Merit for each of the Notices to the

1 California Attorney General, the District Attorneys of every county in California, the City
2 Attorneys of every California city with a population greater than 750,000 and to the named
3 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each of
4 the Certificates certified that CEH's counsel: (1) has consulted with one or more persons with
5 relevant and appropriate experience or expertise who reviewed facts, studies or other data
6 regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information
7 obtained through such consultations, believes that there is a reasonable and meritorious case for a
8 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with
9 Health & Safety Code §25249.7(d) and 11 CCR §3102, each of the Certificates served on the
10 Attorney General included factual information – provided on a confidential basis – sufficient to
11 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's
12 counsel and the facts, studies or other data reviewed by such persons.

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

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

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

25 29. Defendants have been informed of the Lead in their Products by the 60-
26 Day Notice of Violation served on them by CEH and from newspaper reports. Defendants have
27 also been informed of the Lead in their Products by previous Proposition 65 lawsuits regarding
28 other goods manufactured by Defendants that are made with the same materials as the Products,

1 regarding the carcinogenicity and reproductive toxicity of Lead.

2 Wherefore, CEH prays judgment against the Defendants, as set forth hereafter.

3 **PRAYER FOR RELIEF**

4 Wherefore, CEH prays for judgment against Defendants as follows:

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

8 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
9 preliminarily and permanently enjoin Defendants from offering the Products for sale in
10 California with sufficient quantities of Lead such that users of the Products are exposed to a
11 "significant amount" of Lead under Proposition 65 without providing clear and reasonable
12 warnings, as CEH shall specify in further application to the Court;

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

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

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

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21 Dated: June 19, 2008

Respectfully submitted,

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LEXINGTON LAW GROUP, LLP

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Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH

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