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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Dale, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
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11
12 CENTER FOR ENVIRONMENTAL HEALTH)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 AMERICAN-DE ROSA LAMPARTS, INC.;)
17 AMERICAN-DE ROSA LAMPARTS LLC;)
18 EUROFASE, INC.; LANDMARK LIGHTING,)
INC.; LIVEX LIGHTING INC.; MINKA)
19 LIGHTING, INC.; NORWELL MFG. CO. INC.;)
20 PROGRESS LIGHTING, INC.; R.A.M.)
LIGHTING LTD.; VAXCEL)
INTERNATIONAL CO. LTD.; and Defendant)
21 DOES 1 through 200, inclusive,)

22 Defendants.)
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Case No. CV 081722

**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 consumer use of Defendants' light fixtures (the "Products").
10 Consumers in California are exposed to Lead when they use, install, clean, service or otherwise
11 touch or handle the Products. For example, the Products are typically made with leaded solder
used to hold metal frames containing glass plates together.

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

19 **PARTIES**

20 3. Plaintiff Center for Environmental Health ("CEH") is a non-profit
21 corporation dedicated to protecting the public from environmental health hazards and toxic
22 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
23 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and
24 brings this enforcement action in the public interest pursuant to Health & Safety Code
25 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
26 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
27 resulted in significant public benefit, including reformulation of toxic products to make them
28 safer and the provision of clear and reasonable warnings on hundreds of products sold throughout
California.

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

4 5. Defendant American-De Rosa Lamparts LLC is a person in the course of
5 doing business within the meaning of Health & Safety Code §25249.11. American-De Rosa
6 Lamparts LLC manufactures, distributes and/or sells the Products for sale and use in California.

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

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

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

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

19 10. Defendant Norwell Mfg. Co. Inc. is a person in the course of doing
20 business within the meaning of Health & Safety Code §25249.11. Norwell Mfg. Co. Inc.
21 manufactures, distributes and/or sells the Products for sale and use in California.

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

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

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

1 14. DOES 1-200 are each a person in the course of doing business within the
2 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute
3 and/or sell the Products for sale or use in California.

4 15. The true names of DOES 1 through 200 are unknown to plaintiff at this
5 time. When their identities are ascertained, the complaint shall be amended to reflect their true
6 names.

7 16. The Defendants identified in paragraphs 4-13 and DOES 1 through 200 are
8 collectively referred to herein as "Defendants."

9 JURISDICTION AND VENUE

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

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

22 19. Venue is proper in the Marin County Superior Court because one or more of
23 the violations arise in the County of Marin.

24 BACKGROUND FACTS

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

28 21. 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

1 the business responsible for the exposure can prove that it fits within a statutory exemption.

2 Health & Safety Code §25249.6 states, in pertinent part:

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

6 22. On February 27, 1987, the State of California officially listed lead as a
7 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
8 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to
9 the developing fetus, "female reproductive toxicity," which means harm to the female
10 reproductive system, and "male reproductive toxicity," which means harm to the male
11 reproductive system. 22 California Code of Regulations ("CCR") §12000(c). On February 27,
12 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
13 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
14 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

14 23. On October 1, 1992, the State of California officially listed lead and lead
15 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
16 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
17 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
18 §12000(c); Health & Safety Code §25249.10(b).

18 24. 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.

21 25. Defendants' Products contain sufficient quantities of Lead such that
22 individuals who handle the Products are exposed to Lead through the average use of the Product.
23 Consumer exposures take place when consumers use, install, clean, service or otherwise touch or
24 handle the Products.

25 26. Any person acting in the public interest has standing to enforce violations
26 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
27 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
28

1 action within such time. Health & Safety Code §25249.7(d).

2 27. More than sixty days before naming each Defendant in this suit, CEH
3 provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney General, the
4 District Attorneys of every county in California, the City Attorneys of every California city with
5 a population greater than 750,000, and to each of the named Defendants. Each of the Notices
6 contained the information required by Health & Safety Code §25249.7(d) and 22 CCR
7 §12903(b).

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

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

25 30. Defendants both know and intend that individuals will handle the
26 Products, thus exposing them to Lead.

27 31. The Products typically use un-coated solder to hold metal parts together.
28 This solder is often composed of substantial quantities of Lead.

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 without providing clear and reasonable warnings, as CEH shall specify in further
11 application to the Court;

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


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

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

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20 Dated: April 9, 2008

Respectfully submitted,

21 LEXINGTON LAW GROUP, LLP

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25 _____
Howard Hirsch
Attorneys for Plaintiff
26 CENTER FOR ENVIRONMENTAL
HEALTH
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