

**FILED**

**APR 21 2009**

**KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT**

*By: S. Hendryx, Deputy*

1 LEXINGTON LAW GROUP, LLP  
Mark N. Todzo, State Bar No. 168389  
2 Eric S. Somers, State Bar No. 139050  
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 CENTER FOR ENVIRONMENTAL HEALTH

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10  
11  
12 CENTER FOR ENVIRONMENTAL HEALTH, )  
13 a non-profit corporation, )

14 Plaintiff, )

15 v. )

16 BABY BOOM CONSUMER PRODUCTS, )  
17 INC.; BETESH GROUP HOLDING )  
CORPORATION; CUDLIE ACCESSORIES, )  
18 INC.; CUDLIE ACCESSORIES, LLC; DOLLY, )  
INC.; EASTSPORT, INC.; THE FIRST )  
19 YEARS, INC.; INFANTINO, LLC; )  
KALENCOM CORPORATION; LEARNING )  
20 CURVE BRANDS, INC.; RC2 BRANDS, INC.; )  
STEP2 COMPANY, LLC; WILLIAM CARTER )  
21 COMPANY; and Defendant DOES 1 through )  
200, inclusive, )

22  
23 Defendants. )  
24  
25  
26  
27  
28

Case No. CIV-083678

~~PROPOSED~~ FIRST AMENDED  
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 knowledge,  
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This First Amended Complaint seeks to remedy Defendants' continuing  
6 failure to warn individuals in California that they are being exposed to lead and lead compounds  
7 (collectively, "Lead"), chemicals known to the State of California to cause cancer and birth  
8 defects or other reproductive harm. Such exposures have occurred, and continue to occur,  
9 through the manufacture, distribution, sale and use of Defendants' infant accessory bags,  
10 including but not limited to bags for breast pumps, baby bottles, and pacifiers, diaper bags, and  
11 stroller bags, that contain Lead (the "Products"). Consumers, including children, are exposed to  
12 Lead when they use the Products.

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 and birth defects or other reproductive harm  
16 without providing clear and reasonable warnings to individuals prior to their exposure.  
17 Defendants introduce Products contaminated with significant quantities of Lead into the  
18 California marketplace, thus exposing consumers of their Products, many of whom are children,  
19 to Lead.

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

24 **PARTIES**

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
26 non-profit corporation dedicated to protecting the public from environmental health hazards and  
27 toxic exposures. CEH is based in Oakland, California, and incorporated under the laws of the  
28 State of California. CEH is a "person" within the meaning of Health & Safety Code

1 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &  
2 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy  
3 group that has prosecuted a large number of Proposition 65 cases in the public interest. These  
4 cases have resulted in significant public benefit, including reformulation of toxic products to  
5 make them safer. CEH also provides information to Californians about the health risks  
6 associated with exposure to hazardous substances, where manufacturers and other responsible  
7 parties fail to do so.

8           5. Defendant BABY BOOM CONSUMER PRODUCTS, INC. (“Baby  
9 Boom”) is a person in the course of doing business within the meaning of Health & Safety Code  
10 § 25249.11. Baby Boom manufactures, distributes and/or sells the Products for sale and use in  
11 California.

12           6. Defendant THE BETESH GROUP HOLDING CORPORATION (“Betesh  
13 Group”) is a person in the course of doing business within the meaning of Health & Safety Code  
14 § 25249.11. Betesh Group manufactures, distributes and/or sells the Products for sale and use in  
15 California.

16           7. Defendant CUDLIE ACCESSORIES, INC. is a person in the course of  
17 doing business within the meaning of Health & Safety Code § 25249.11. Cudlie Accessories,  
18 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

19           8. Defendant CUDLIE ACCESSORIES, LLC is a person in the course of  
20 doing business within the meaning of Health & Safety Code § 25249.11. Cudlie Accessories,  
21 LLC manufactures, distributes and/or sells the Products for sale and use in California.

22           9. Defendant DOLLY, INC. (“Dolly”) is a person in the course of doing  
23 business within the meaning of Health & Safety Code § 25249.11. Dolly manufactures,  
24 distributes and/or sells the Products for sale and use in California.

25           10. Defendant EASTSPORT, INC. (“Eastsport”) is a person in the course of  
26 doing business within the meaning of Health & Safety Code § 25249.11. Eastsport  
27 manufactures, distributes and/or sells the Products for sale and use in California.

28           11. Defendant THE FIRST YEARS, INC. (“First Years”) is a person in the

1 course of doing business within the meaning of Health & Safety Code § 25249.11. First Years  
2 manufactures, distributes and/or sells the Products for sale and use in California.

3 12. Defendant INFANTINO, LLC (“Infantino”) is a person in the course of  
4 doing business within the meaning of Health & Safety Code § 25249.11. Infantino  
5 manufactures, distributes and/or sells the Products for sale and use in California.

6 13. Defendant THE KALENCOM CORPORATION (“Kalencom”) is a person  
7 in the course of doing business within the meaning of Health & Safety Code § 25249.11.  
8 Kalencom manufactures, distributes and/or sells the Products for sale and use in California.

9 14. Defendant LEARNING CURVE BRANDS, INC. (“Learning Curve”) is a  
10 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.  
11 Learning Curve manufactures, distributes and/or sells the Products for sale and use in California.

12 15. Defendant RC2 BRANDS, INC. (“RC2”) is a person in the course of  
13 doing business within the meaning of Health & Safety Code § 25249.11. RC2 manufactures,  
14 distributes and/or sells the Products for sale and use in California.

15 16. Defendant THE STEP2 COMPANY, LLC (“Step2”) is a person in the  
16 course of doing business within the meaning of Health & Safety Code § 25249.11. Step2  
17 manufactures, distributes and/or sells the Products for sale and use in California.

18 17. Defendant THE WILLIAM CARTER COMPANY (“Carter”) is a person  
19 in the course of doing business within the meaning of Health & Safety Code § 25249.11. Carter  
20 manufactures, distributes and/or sells the Products for sale and use in California.

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

24 19. The true names of DOES 1 through 200 are unknown to CEH at this time.  
25 When their identities are ascertained, the complaint shall be amended to reflect their true names.

26 20. The defendants identified in paragraphs 5 through 17, inclusive, and  
27 DOES 1 through 200, are collectively referred to herein as “Defendants.”  
28

1 **JURISDICTION AND VENUE**

2 21. The Court has jurisdiction over this action pursuant to Health & Safety  
3 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
4 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
5 to other trial courts.

6 22. 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 23. Venue is proper in the Marin Superior Court because one or more of the  
13 violations arise in the County of Marin.

14 **BACKGROUND FACTS**

15 24. 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 25. 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 26. 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. 27 California Code of Regulations (“C.C.R.”) § 27001(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. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

7           27. 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. 27 C.C.R.  
11 § 27001(c); Health & Safety Code § 25249.10(b).

12           28. 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           29. 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, J.M.,  
24 Svendgaard, D.J.; “Lead and Child Development”; *Nature* 329:297-300, 1987. One study on the  
25 effect of childhood Lead exposure declared that even the smallest detectable amount of blood  
26 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,  
27 B.P., Dietrich, K., Auinger, P., Cox, C.; “Subclinical Lead Toxicity in U.S. Children and  
28 Adolescents”; *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed

1 children into adulthood and found a sevenfold increase in the risk for developing a reading  
2 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,  
3 Schell, A., Bellinger, D., Leviton, A., Allred, E.N.; "The Long-Term Effects of Exposure to Low  
4 Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*;  
5 322:83-88, 1990.

6           30. Defendants' Products contain sufficient quantities of Lead such that  
7 consumers and users, including children, of the Products are exposed to Lead through the average  
8 use of the Products. Consumers and users of the Products are exposed to Lead via dermal  
9 contact when they touch or handle the Products or items that have been placed in the Products.  
10 In addition, consumers and users of the Products, including children, are exposed to Lead via  
11 ingestion when they: (1) touch or handle the Products or items that have been placed in the  
12 Products and then touch their mouths; and (2) place pieces of the Products or items that have  
13 been placed in the Products directly in their mouths.

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

18           32. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
19 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
20 the District Attorneys of every county in California, the City Attorneys of every California city  
21 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
22 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each of the Notices included the  
23 following information: (1) the name and address of the violators; (2) the statute violated; (3) the  
24 time period during which violations occurred; (4) specific descriptions of the violations,  
25 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of  
26 Products sold and used in violation of Proposition 65; and (5) the name of the specific  
27 Proposition 65-listed chemical (Lead) that is the subject of the violations described in each of the  
28 Notices.

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

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

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

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

25                   37.     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 individuals to Lead without first giving clear and reasonable warnings to such individuals  
2 regarding the carcinogenicity and reproductive toxicity of Lead.

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

4 **PRAYER FOR RELIEF**

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

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

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

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

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

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

21  
22 Dated: April 21, 2009

Respectfully submitted,

23 LEXINGTON LAW GROUP, LLP

24 

25 Mark N. Todzo  
26 Attorneys for Plaintiff  
27 CENTER FOR ENVIRONMENTAL  
28 HEALTH