

**FILED**

**JUL 29 2008**

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MARIN COUNTY SUPERIOR COURT  
By: C. Larsen, Deputy

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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; DOLLY, INC.; )  
18 EASTSPORT, INC.; THE FIRST YEARS, )  
INC.; INFANTINO, LLC; KALENCOM )  
19 CORPORATION; LEARNING CURVE )  
BRANDS, INC.; RC2 BRANDS, INC.; STEP2 )  
20 COMPANY, LLC; WILLIAM CARTER )  
COMPANY; and Defendant DOES 1 through )  
21 200, inclusive, )

22 Defendants. )  
23 \_\_\_\_\_ )  
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Case No. CV 083678

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6 *et seq.*

(Other)

**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' infant accessory bags, including but not  
10 limited to bags for breast pumps, baby bottles, and pacifiers, diaper bags, and stroller bags, that  
11 contain Lead (the "Products"). Consumers, including children, are exposed to Lead when they  
12 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 to  
15 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 §25249.11(a)

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

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

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

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

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

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

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

27           11. Defendant THE KALENCOM CORPORATION (“Kalencom”) is a person  
28 in the course of doing business within the meaning of Health & Safety Code §25249.11.

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

2 12. Defendant LEARNING CURVE BRANDS, INC. ("Learning Curve") is a  
3 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

4 Learning Curve manufactures, distributes and/or sells the Products for sale and use in California.

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

8 14. Defendant THE STEP2 COMPANY, LLC ("Step2") is a person in the  
9 course of doing business within the meaning of Health & Safety Code §25249.11. Step2  
10 manufactures, distributes and/or sells the Products for sale and use in California.

11 15. Defendant THE WILLIAM CARTER COMPANY ("Carter") is a person  
12 in the course of doing business within the meaning of Health & Safety Code §25249.11. Carter  
13 manufactures, distributes and/or sells the Products for sale and use in California.

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

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

19 18. The defendants identified in paragraphs 5 through 15, inclusive, and DOES  
20 1 through 200, are collectively referred to herein as "Defendants."

21 **JURISDICTION AND VENUE**

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

28 20. This Court has jurisdiction over the Defendants because each is a business

1 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
2 intentionally avails itself of the California market through the sale, marketing or use of the  
3 Products in California and/or by having such other contacts with California so as to render the  
4 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
5 play and substantial justice.

6 21. Venue is proper in the Marin Superior Court because one or more of the  
7 violations arise in the County of Marin.

8 **BACKGROUND FACTS**

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

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

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

20 24. On February 27, 1987, the State of California officially listed lead as a  
21 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
22 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
23 the developing fetus, “female reproductive toxicity,” which means harm to the female  
24 reproductive system, and “male reproductive toxicity,” which means harm to the male  
25 reproductive system. 22 California Code of Regulations (“C.C.R.”) §12000(c). On February 27,  
26 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead became  
27 subject to the clear and reasonable warning requirement regarding reproductive toxicants under  
28 Proposition 65. 22 C.C.R. §12000(c); Health & Safety Code §25249.10(b).

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

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

16                   27.     There is no safe level of exposure to Lead and even minute amounts of  
17 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,  
18 Svendgaard, D.J.; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the  
19 effect of childhood Lead exposure declared that even the smallest detectable amount of blood  
20 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,  
21 B.P., Dietrich, K., Auinger, P., Cox, C.; "Subclinical Lead Toxicity in U.S. Children and  
22 Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed  
23 children into adulthood and found a sevenfold increase in the risk for developing a reading  
24 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,  
25 Schell, A., Bellinger, D., Leviton, A., Allred, E.N.; "The Long-Term Effects of Exposure to Low  
26 Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*;  
27 322:83-88, 1990.

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

1 consumers and users, including children, of the Products are exposed to Lead through the average  
2 use of the Products. Consumers and users of the Products are exposed to Lead via dermal  
3 contact when they touch or handle the Products or items that have been placed in the Products.  
4 In addition, consumers and users of the Products, including children, are exposed to Lead via  
5 ingestion when they: (1) touch or handle the Products or items that have been placed in the  
6 Products and then touch their mouths; and (2) place pieces of the Products or items that have  
7 been placed in the Products directly in their mouths.

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

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

22           31. CEH also sent a Certificate of Merit for each of the Notices to the  
23 California Attorney General, the District Attorneys of every county in California, the City  
24 Attorneys of every California city with a population greater than 750,000 and to the named  
25 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each  
26 of the Certificates certified that CEH's counsel: (1) has consulted with one or more persons with  
27 relevant and appropriate experience or expertise who reviewed facts, studies or other data  
28 regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information

1 obtained through such consultations, believes that there is a reasonable and meritorious case for a  
2 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with  
3 Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the Certificates served on the  
4 Attorney General included factual information – provided on a confidential basis – sufficient to  
5 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH’s  
6 counsel and the facts, studies or other data reviewed by such persons.

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

11           33. Defendants both know and intend that individuals, including children, will  
12 handle the Products and handle and ingest items stored inside the Products, thus exposing them to  
13 Lead.

14           34. The Products are typically made from polyvinyl chloride (“PVC”). The  
15 association between PVC and Lead exposure has been widely discussed in the media in recent  
16 years, with particular attention given to products made from PVC that are marketed exclusively to  
17 children. Defendants’ Products are also made with pigments, many of which contain Lead.

18           35. Defendants have been informed of the Lead in their Products by the 60-day  
19 Notice of Violation served on them by CEH and from newspaper reports. Defendants have also  
20 been informed of the Lead in their Products by previous Proposition 65 lawsuits regarding other  
21 goods manufactured by Defendants that are made with the same materials as the Products,  
22 including PVC.

23           36. Nevertheless, Defendants continue to expose consumers, including  
24 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or  
25 reproductive hazards of Lead.

26           37. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
27 prior to filing this complaint.

28           38. Any person “violating or threatening to violate” Proposition 65 may be



1 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. "Threaten to  
2 violate" is defined to mean "to create a condition in which there is a substantial probability that a  
3 violation will occur." Health & Safety Code §25249.11(e). Proposition 65 provides for civil  
4 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

5 **FIRST CAUSE OF ACTION**

6 **(Violations of the Health & Safety Code §25249.6)**

7 39. CEH realleges and incorporates by reference as if specifically set forth  
8 herein Paragraphs 1 through 38, inclusive.

9 40. By placing the Products into the stream of commerce, Defendants are a  
10 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

11 41. Defendants know that average use of the Products will expose users of the  
12 Products to Lead. Defendants intend that the Products be used in a manner that results in users of  
13 the Products being exposed to Lead contained in the Products.

14 42. The Defendants have failed, and continue to fail, to provide clear and  
15 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of  
16 the Products.

17 43. Lead is a chemical listed by the State of California as known to cause  
18 cancer, birth defects and other reproductive harm.

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

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

24 **PRAYER FOR RELIEF**

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

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

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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 with sufficient quantities of Lead such that users of the Products are exposed to a “significant amount” of Lead under Proposition 65 without providing clear and reasonable warnings, as CEH 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 CEH 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 CEH its 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 28, 2008

Respectfully submitted,  
LEXINGTON LAW GROUP, LLP



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Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL  
HEALTH