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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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CASE MANAGEMENT CONFERENCE SET

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DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

1 LEXINGTON LAW GROUP, LLP  
2 Mark N. Todzo, State Bar No. 168389  
3 Eric S. Somers, State Bar No. 139050  
4 Howard Hirsch, State Bar No. 213209  
5 1627 Irving Street  
6 San Francisco, CA 94122  
7 Telephone: (415) 759-4111  
8 Facsimile: (415) 759-4112

9 Attorneys for Plaintiff  
10 CENTER FOR ENVIRONMENTAL HEALTH

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

14 Plaintiff, )

15 v. )

16 ZM INTERNATIONAL, INC. doing business as )  
17 KIDORABLE, and Defendant DOES 1 through )  
18 200, inclusive, )

19 Defendants. )  
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Case No. \_\_\_\_\_

**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' backpacks and rainwear (the "Products").  
10 Consumers, including children, are exposed to Lead when they use, wear, touch, and otherwise  
11 handle the Products or items that have been stored or placed in the Products.

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. Defendants  
16 introduce Products contaminated with significant quantities of Lead into the California  
17 marketplace, exposing consumers of their Products, many of whom are children, to Lead.

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

#### 22 PARTIES

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

1 group that has prosecuted a large number of Proposition 65 cases in the public interest. These  
2 cases have resulted in significant public benefit, including reformulation of toxic products to  
3 make them safer. CEH also provides information to Californians about the health risks  
4 associated with exposure to hazardous substances, where manufacturers and other responsible  
5 parties fail to do so.

6 5. Defendant ZM INTERNATIONAL, INC. DOING BUSINESS AS  
7 KIDORABLE (“Kidorable”) is a person in the course of doing business within the meaning of  
8 Health & Safety Code §25249.11. Kidorable manufactures, distributes and/or sells the Products  
9 for sale and use in California.

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

13 7. The true names of DOES 1 through 200 are unknown to CEH at this time.  
14 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

15 8. The defendant identified in paragraph 5, and DOES 1 through 200, are  
16 collectively referred to herein as “Defendants.”

### 17 **JURISDICTION AND VENUE**

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

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

1 play and substantial justice.

2 11. Venue is proper in the San Francisco Superior Court because one or more  
3 of the violations arise in the County of San Francisco.

4 **BACKGROUND FACTS**

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

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

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

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

25 15. On October 1, 1992, the State of California officially listed lead and lead  
26 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
27 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
28 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR

1 §12000(c); Health & Safety Code §25249.10(b).

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

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

23 18. Defendants' Products contain sufficient quantities of Lead such that  
24 consumers, including children, who handle the Products and handle and ingest items stored  
25 inside the Products are exposed to Lead through the average use of the Products.

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

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

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

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

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

1 asserted in the Notice.

2 23. Defendants both know and intend that individuals, including children, will  
3 handle the Products and handle and ingest items stored inside the Products, thus exposing them  
4 to Lead.

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

10 25. Defendants have been informed of the Lead in their Products by the 60-  
11 Day Notice of Violation served on them by CEH and from newspaper reports.

12 26. Nevertheless, Defendants continue to expose consumers, including  
13 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or  
14 reproductive hazards of Lead.

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

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

22 **FIRST CAUSE OF ACTION**

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

24 29. CEH realleges and incorporates by reference as if specifically set forth  
25 herein Paragraphs 1 through 28 inclusive.

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

28 31. Defendants know that average use of the Products will expose users of the

1 Products to Lead. Defendants intend that the Products be used in a manner that results in users  
2 of the Products being exposed to Lead contained in the Products.

3 32. The Defendants have failed, and continue to fail, to provide clear and  
4 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of  
5 the Products.

6 33. Lead is a chemical listed by the State of California as known to cause  
7 cancer, birth defects and other reproductive harm.

8 34. By committing the acts alleged above, the Defendants have at all times  
9 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
10 individuals to Lead without first giving clear and reasonable warnings to such individuals  
11 regarding the carcinogenicity and reproductive toxicity of Lead.

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

13 **PRAYER FOR RELIEF**

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

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

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

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

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

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

1 proper.

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3 Dated: August 19, 2008

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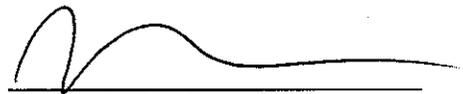
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Respectfully submitted,

LEXINGTON LAW GROUP, LLP



Howard Hirsch  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL  
HEALTH