

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

**ENDORSED
FILED
ALAMEDA COUNTY**

**SEP 02 2008
CLERK OF THE SUPERIOR COURT
By Molly Kautz**

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

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

14 Plaintiff,)

15 v.)

16 BEAULIEU GROUP, LLC; and Defendant)
17 DOES 1 through 200, inclusive,)

18 Defendants.)
19
20
21
22
23
24
25
26
27
28

Case No. RG 08-400090~~1~~

FIRST AMENDED COMPLAINT

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 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' artificial and synthetic grass
10 and turf (the "Products"), which contain Lead. Consumers, including children, are exposed to
11 Lead when they use 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 to
14 chemicals known to the State to cause cancer and birth defects or other reproductive harm
15 without providing clear and reasonable warnings to individuals prior to their exposure.
16 Defendants introduce Products that contain significant quantities of Lead into the California
17 marketplace, thus 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 make
3 them safer. CEH also provides information to Californians about the health risks associated with
4 exposure to hazardous substances, where manufacturers and other responsible parties fail to do
5 so.

6 5. Defendant BEAULIEU GROUP, LLC (“Beaulieu”) is a person in the
7 course of doing business within the meaning of Health & Safety Code § 25249.11. Beaulieu
8 manufactures, distributes and/or sells the Products for sale and use in California.

9 6. Defendant SHAW INDUSTRIES, INC. (“Shaw Industries”) is a person in
10 the course of doing business within the meaning of Health & Safety Code § 25249.11. Shaw
11 Industries manufactures, distributes and/or sells the Products for sale and use in California.

12 7. Defendant SYNTHETIC TURF INTERNATIONAL, LLC (“STI”) is a
13 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.
14 STI manufactures, distributes and/or sells the Products for sale and use in California.

15 8. Defendant TURF HEADQUARTERS is a person in the course of doing
16 business within the meaning of Health & Safety Code § 25249.11. Turf Headquarters
17 manufactures, distributes and/or sells the Products for sale and use in California.

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

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

23 11. The defendants identified in paragraphs 5 to 8 and DOES 1 through 200,
24 are collectively referred to herein as “Defendants.”

25 **JURISDICTION AND VENUE**

26 12. The Court has jurisdiction over this action pursuant to Health & Safety
27 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
28 to California Constitution Article VI, Section 10, because this case is a cause not given by statute

1 to other trial courts.

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

8 14. Venue is proper in the Alameda Superior Court because one or more of the
9 violations arise in the County of Alameda.

10 **BACKGROUND FACTS**

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

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

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

22 17. On February 27, 1987, the State of California officially listed lead as a
23 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
24 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
25 the developing fetus, “female reproductive toxicity,” which means harm to the female
26 reproductive system, and “male reproductive toxicity,” which means harm to the male
27 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,
28 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead became

1 subject to the clear and reasonable warning requirement regarding reproductive toxicants under
2 Proposition 65. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

3 18. On October 1, 1992, the State of California officially listed lead and lead
4 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
5 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
6 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
7 § 27001(c); Health & Safety Code § 25249.10(b).

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

18 20. 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, J.M.,
20 Svendgaard, D.J.; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the
21 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
22 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
23 B.P., Dietrich, K., Auinger, P., Cox, C.; "Subclinical Lead Toxicity in U.S. Children and
24 Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
25 children into adulthood and found a sevenfold increase in the risk for developing a reading
26 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
27 Schell, A., Bellinger, D., Leviton, A., Allred, E.N.; "The Long-Term Effects of Exposure to Low
28 Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*;

1 322:83-88, 1990.

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

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

14 23. On or about May 15, 2008, CEH provided a 60-Day "Notice of Violation
15 of Proposition 65" to the California Attorney General, the District Attorneys of every county in
16 California, the City Attorneys of every California city with a population greater than 750,000, and
17 to Defendant Beaulieu. On or about June 23, 2008, CEH provided a 60-Day "Notice of Violation
18 of Proposition 65" to the California Attorney General, the District Attorneys of every county in
19 California, the City Attorneys of every California city with a population greater than 750,000, and
20 to Defendants Shaw Industries, STI and Turf Headquarters. In compliance with Health & Safety
21 Code § 25249.7(d) and 27 C.C.R. § 25903(b), each of the Notices included the following
22 information: (1) the name and address of the violators; (2) the statute violated; (3) the time period
23 during which violations occurred; (4) specific descriptions of the violations, including (a) the
24 routes of exposure to Lead from the Products, and (b) the specific type of Products sold and used
25 in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical
26 (Lead) that is the subject of the violations described in each of the Notices.

27 24. CEH also sent a Certificate of Merit for each of the Notices to the
28 California Attorney General, the District Attorneys of every county in California, the City

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

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

16 26. Defendants both know and intend that individuals, including children, will
17 touch and handle the Products, and handle and ingest items placed on the Products, thus exposing
18 them to Lead.

19 27. Defendants have been informed of the Lead in their Products by the 60-day
20 Notice of Violation served on them by CEH and from newspaper and other published reports.

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

24 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein
25 prior to filing this complaint.

26 30. Any person “violating or threatening to violate” Proposition 65 may be
27 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to
28 violate” is defined to mean “to create a condition in which there is a substantial probability that a

1 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
2 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

3 **FIRST CAUSE OF ACTION**

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

5 31. CEH realleges and incorporates by reference as if specifically set forth
6 herein Paragraphs 1 through 30, inclusive.

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

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

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

15 35. Lead is a chemical listed by the State of California as known to cause
16 cancer, birth defects and other reproductive harm.

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

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

22 **PRAYER FOR RELIEF**

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

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

27 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
28 preliminarily and permanently enjoin Defendants from offering the Products for sale in California

1 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation
2 of Proposition 65 according to proof;

3 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
4 preliminarily and permanently enjoin Defendants from offering the Products for sale in
5 California with sufficient quantities of Lead such that users of the Products are exposed to an
6 amount of Lead requiring a warning under Proposition 65 without providing clear and
7 reasonable warnings, as CEH shall specify in further application to the Court;

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

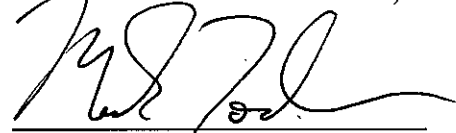
11 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 and any
12 other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

15
16 Dated: September 2, 2008

Respectfully submitted,

17 LEXINGTON LAW GROUP, LLP

18 

19 _____
20 Mark N. Todzo
21 Attorneys for Plaintiff
22 CENTER FOR ENVIRONMENTAL
23 HEALTH
24
25
26
27
28