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ENDORSED
FILED
ALAMEDA COUNTY

JUN 24 2009
CLERK OF THE SUPERIOR COURT
By ESTHER COLEMAN, BERRY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 RG09459448

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

Case No. _____

12)

13 Plaintiff,)

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

14 v.)

Health & Safety Code §25249.6, *et seq.*

15 LULU NYC LLC; LULU NYC MANAGER)
16 LLC; A.I.J.J. ENTERPRISES, INC.; ACME)
ACCESSORIES, INC.; ALDO GROUP, INC.;)
17 ASHLEY STEWART LTD.; BAKERS)
FOOTWEAR GROUP, INC.; CELS)
18 ENTERPRISES, INC. DBA CHINESE)
LAUNDRY; DSW, INC.; DSW SHOE)
WAREHOUSE, INC.; FANTASIA)
19 ACCESSORIES, LTD.; FOREVER 21, INC.;)
FOREVER 21 RETAIL, INC.; FOSSIL, INC.;)
20 FOSSIL STORES I, INC.; H&M HENNES &)
MAURITZ, L.P.; J.C. PENNEY)
21 CORPORATION, INC.; JONES APPAREL)
GROUP, INC.; JONES RETAIL)
22 CORPORATION; KOHL'S CORPORATION;)
KOHL'S DEPARTMENT STORES, INC.; LIZ)
23 CLAIBORNE, INC.; MACY'S, INC. DBA)
MACY'S STORES OF CALIFORNIA;)
24 MACY'S DEPARTMENT STORES, INC.;)
THE NEW 5-7-9 AND BEYOND, INC.;)
25 QUIKSILVER, INC.; QUIKSILVER)
AMERICAS, INC.; QS WHOLESALE, INC.;)
26 RAINBOW APPAREL DISTRIBUTION)
CENTER CORP.; RAINBOW USA, INC.;)
27 ROSETTI HANDBAGS AND ACCESSORIES,)
LTD.; ROSS STORES, INC.; SAN DIEGO)
28 HAT COMPANY; SEARS, ROEBUCK AND)

(Other)

1 CO.; STEVE MADDEN LTD.; STEVE)
MADDEN RETAIL, INC.; TARGET)
2 CORPORATION; TOKYO BAY, INC.;)
URBAN BRANDS, INC.; WAL-MART)
3 STORES, INC.; and Defendant DOES 1 through)
500, inclusive,)
4)
Defendants.)
5)
_____)

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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 and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of Defendants' vinyl and faux leather wallets, handbags,
10 purses, clutches and totes (the "Products"). Consumers, including pregnant women, are exposed
11 to Lead when they use, touch or handle 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 pregnant women, to
18 Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and
20 other people who come into contact with the Products to Lead, Defendants provide no warnings
21 whatsoever about the carcinogenic or reproductive hazards associated with these Lead exposures.
22 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety
23 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 the reformulation of thousands of
5 products to remove toxic chemicals to make them safer. CEH also provides information to
6 Californians about the health risks associated with exposure to hazardous substances, where
7 manufacturers and other responsible parties fail to do so.

8 5. Defendant A.I.J.J. ENTERPRISES, INC. (“A.I.J.J.”) is a person in the
9 course of doing business within the meaning of Health & Safety Code §25249.11. A.I.J.J.
10 manufactures, distributes and/or sells the Products for sale or use in California.

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

14 7. Defendant ASHLEY STEWART LTD. (“Ashley Stewart”) is a person in
15 the course of doing business within the meaning of Health & Safety Code §25249.11. Ashley
16 Stewart manufactures, distributes and/or sells the Products for sale or use in California.

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

20 9. Defendant CELS ENTERPRISES, INC. DBA CHINESE LAUNDRY
21 (“Cels”) is a person in the course of doing business within the meaning of Health & Safety Code
22 §25249.11. Cels manufactures, distributes and/or sells the Products for sale or use in California.

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

26 11. Defendant DSW SHOE WAREHOUSE, INC. (“DSW Shoe Warehouse”)
27 is a person in the course of doing business within the meaning of Health & Safety Code
28 §25249.11. DSW Shoe Warehouse manufactures, distributes and/or sells the Products for sale or

1 use in California.

2 12. Defendant FANTASIA ACCESSORIES, LTD. ("Fantasia") is a person in
3 the course of doing business within the meaning of Health & Safety Code §25249.11. Fantasia
4 manufactures, distributes and/or sells the Products for sale or use in California.

5 13. Defendant FOREVER 21, INC. ("Forever 21") is a person in the course of
6 doing business within the meaning of Health & Safety Code §25249.11. Forever 21
7 manufactures, distributes and/or sells the Products for sale or use in California.

8 14. Defendant FOREVER 21 RETAIL, INC. ("Forever 21 Retail") is a person
9 in the course of doing business within the meaning of Health & Safety Code §25249.11. Forever
10 21 Retail manufactures, distributes and/or sells the Products for sale or use in California.

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

14 16. Defendant FOSSIL STORES I, INC. ("Fossil Stores") is a person in the
15 course of doing business within the meaning of Health & Safety Code §25249.11. Fossil Stores
16 manufactures, distributes and/or sells the Products for sale or use in California.

17 17. Defendant H&M HENNES & MAURITZ, L.P. ("H&M") is a person in
18 the course of doing business within the meaning of Health & Safety Code §25249.11. H&M
19 manufactures, distributes and/or sells the Products for sale or use in California.

20 18. Defendant J.C. PENNEY CORPORATION, INC. ("J.C. Penney") is a
21 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
22 J.C. Penney manufactures, distributes and/or sells the Products for sale or use in California.

23 19. Defendant JONES APPAREL GROUP, INC. ("Jones Apparel") is a
24 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
25 Jones Apparel manufactures, distributes and/or sells the Products for sale or use in California.

26 20. Defendant JONES RETAIL CORPORATION ("Jones Retail") is a person
27 in the course of doing business within the meaning of Health & Safety Code §25249.11. Jones
28 Retail manufactures, distributes and/or sells the Products for sale or use in California.

1 21. Defendant KOHL'S CORPORATION ("Kohl's") is a person in the course
2 of doing business within the meaning of Health & Safety Code §25249.11. Kohl's manufactures,
3 distributes and/or sells the Products for sale or use in California.

4 22. Defendant KOHL'S DEPARTMENT STORES, INC. ("Kohl's
5 Department Stores") is a person in the course of doing business within the meaning of Health &
6 Safety Code §25249.11. Kohl's Department Stores manufactures, distributes and/or sells the
7 Products for sale or use in California.

8 23. Defendant LIZ CLAIBORNE, INC. ("Liz Claiborne") is a person in the
9 course of doing business within the meaning of Health & Safety Code §25249.11. Liz Claiborne
10 manufactures, distributes and/or sells the Products for sale or use in California.

11 24. Defendant LULU NYC LLC ("Lulu NYC") is a person in the course of
12 doing business within the meaning of Health & Safety Code §25249.11. Lulu NYC
13 manufactures, distributes and/or sells the Products for sale or use in California.

14 25. Defendant LULU NYC MANAGER LLC ("Lulu NYC Manager") is a
15 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
16 Lulu NYC Manager manufactures, distributes and/or sells the Products for sale or use in
17 California.

18 26. Defendant MACY'S, INC. DBA MACY'S STORES OF CALIFORNIA
19 ("Macy's") is a person in the course of doing business within the meaning of Health & Safety
20 Code §25249.11. Macy's manufactures, distributes and/or sells the Products for sale or use in
21 California.

22 27. Defendant MACY'S DEPARTMENT STORES, INC. ("Macy's
23 Department Stores") is a person in the course of doing business within the meaning of Health &
24 Safety Code §25249.11. Macy's Department Stores manufactures, distributes and/or sells the
25 Products for sale or use in California.

26 28. Defendant THE NEW 5-7-9 AND BEYOND, INC. ("New 5-7-9") is a
27 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
28 New 5-7-9 manufactures, distributes and/or sells the Products for sale or use in California.

1 29. Defendant QUIKSILVER, INC. (“Quiksilver”) is a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11. Quiksilver
3 manufactures, distributes and/or sells the Products for sale or use in California.

4 30. Defendant QUIKSILVER AMERICAS, INC. (“Quiksilver Americas”) is a
5 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
6 Quiksilver Americas manufactures, distributes and/or sells the Products for sale or use in
7 California.

8 31. Defendant QS WHOLESALE, INC. (“QS”) is a person in the course of
9 doing business within the meaning of Health & Safety Code §25249.11. QS manufactures,
10 distributes and/or sells the Products for sale or use in California.

11 32. Defendant RAINBOW APPAREL DISTRIBUTION CENTER CORP.
12 (“Rainbow Apparel”) is a person in the course of doing business within the meaning of Health &
13 Safety Code §25249.11. Rainbow Apparel manufactures, distributes and/or sells the Products for
14 sale or use in California.

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

18 34. Defendant ROSETTI HANDBAGS AND ACCESSORIES, LTD.
19 (“Rosetti”) is a person in the course of doing business within the meaning of Health & Safety
20 Code §25249.11. Rosetti manufactures, distributes and/or sells the Products for sale or use in
21 California.

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

25 36. Defendant SAN DIEGO HAT COMPANY (“SDHC”) is a person in the
26 course of doing business within the meaning of Health & Safety Code §25249.11. SDHC
27 manufactures, distributes and/or sells the Products for sale or use in California.

28 37. Defendant SEARS, ROEBUCK AND CO. (“Sears”) is a person in the

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

3 38. Defendant STEVE MADDEN LTD. (“Steve Madden”) is a person in the
4 course of doing business within the meaning of Health & Safety Code §25249.11. Steve Madden
5 manufactures, distributes and/or sells the Products for sale or use in California.

6 39. Defendant STEVE MADDEN RETAIL, INC. (“Steve Madden Retail”) is
7 a person in the course of doing business within the meaning of Health & Safety Code §25249.11.
8 Steve Madden Retail manufactures, distributes and/or sells the Products for sale or use in
9 California.

10 40. Defendant TARGET CORPORATION (“Target”) is a person in the course
11 of doing business within the meaning of Health & Safety Code §25249.11. Target manufactures,
12 distributes and/or sells the Products for sale or use in California.

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

16 42. Defendant URBAN BRANDS, INC. (“Urban Brands”) is a person in the
17 course of doing business within the meaning of Health & Safety Code §25249.11. Urban Brands
18 manufactures, distributes and/or sells the Products for sale or use in California.

19 43. Defendant WAL-MART STORES, INC. (“Wal-Mart”) is a person in the
20 course of doing business within the meaning of Health & Safety Code §25249.11. Wal-Mart
21 manufactures, distributes and/or sells the Products for sale or use in California.

22 44. DOES 1 through 500 are each a person in the course of doing business
23 within the meaning of Health & Safety Code §25249.11. DOES 1 through 500 manufacture,
24 distribute and/or sell the Products for sale or use in California.

25 45. The true names of DOES 1 through 500 are unknown to CEH at this time.
26 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

27 46. The defendants identified in paragraphs 5 through 43 and DOES 1 through
28 500 are collectively referred to herein as “Defendants.”

1 JURISDICTION AND VENUE

2 47. 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 48. 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 49. Venue is proper in the Alameda Superior Court because one or more of the
13 violations arise in the County of Alameda.

14 BACKGROUND FACTS

15 50. 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 51. To effectuate this goal, Proposition 65 prohibits exposing people to
19 chemicals listed by the State of California as known to cause cancer, birth defects or other
20 reproductive harm without a “clear and reasonable warning” unless the business responsible for
21 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6
22 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 52. 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 53. 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 54. Young children are exposed to Lead from the Products when they touch or
13 play with Products that are owned or used by their parents or caretakers. In addition, young
14 children are exposed to Lead from the Products when they eat food that is stored or carried in the
15 Products or touch or play with non-food items that are stored or carried in Products. Additional
16 childhood exposures to Lead occur when children then touch their hands to their mouths after
17 their hands have touched the Products or items stored or carried in the Products.

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

28 56. There is no safe level of exposure to Lead and even minute amounts of

1 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,
2 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
3 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
4 lead levels in children can mean the difference between an A or B grade in school. Lanphear,
5 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
6 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
7 children into adulthood and found a sevenfold increase in the risk for developing a reading
8 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
9 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low
10 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*
11 322:83-88, 1990.

12 57. Lead exposures for pregnant women are also of particular concern in light
13 of evidence that even short term lead exposures *in utero* may have long-term harmful effects.
14 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
15 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced
16 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health*
17 *Perspectives* 114:5, 2006.

18 58. Lead is found in the vinyl or other fabric or material that many of the
19 Products are made from. Lead serves both as a stabilizer and as a chemical ingredient in some of
20 the Product's dies, paints and other coloring agents. Lead is also found in the metallic
21 components such as zippers and zipper pulls used on some of the Products.

22 59. Defendants' Products contain sufficient quantities of Lead such that
23 consumers, including pregnant women and children, who use, touch or handle the Products are
24 exposed to Lead through the average use of the Products. The route of exposure for the
25 violations is direct ingestion when consumers place the Products or items that have been stored
26 in the Products in their mouths; ingestion via hand to mouth contact after consumers use, touch
27 or handle the Products or items that have been stored in the Products; and dermal absorption
28 directly through the skin when consumers use, touch or handle the Products or items that have

1 been stored in the Products.

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

6 61. More than sixty days prior to naming each Defendant in this lawsuit, CEH
7 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
8 the District Attorneys of every county in California, the City Attorneys of every California city
9 with a population greater than 750,000 and to each of the named Defendants. In compliance with
10 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included the
11 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
12 time period during which violations occurred; (4) specific descriptions of the violations,
13 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
14 products sold and used in violation of Proposition 65; and (5) the name of the specific
15 Proposition 65-listed chemical that is the subject of the violations described in each of the
16 Notices.

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

1 counsel and the facts, studies or other data reviewed by such persons.

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

6 64. Defendants both know and intend that individuals, including pregnant
7 women and children, will use, touch or handle the Products, thus exposing them to Lead.

8 65. Under Proposition 65, an exposure is “knowing” where the party
9 responsible for such exposure has:

10 knowledge of the fact that a[n] . . . exposure to a chemical listed
11 pursuant to Health and Safety Code §25249.8(a) is occurring. No
12 knowledge that the . . . exposure is unlawful is required.

13 27 CCR §12201(d). This knowledge may be either actual or constructive. Final Statement of
14 Reasons, 22 California Code of Regulations Division 2, Section 12201.

15 66. No clear and reasonable warning is provided with the Products regarding
16 the carcinogenic or reproductive hazards of Lead.

17 67. Defendants have been informed of the Lead in their Products by the 60-
18 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

19 68. Nevertheless, Defendants continue to expose consumers, including
20 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the
21 carcinogenic and/or reproductive hazards of Lead.

22 69. CEH has engaged in good-faith efforts to resolve the claims alleged herein
23 prior to filing this complaint.

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

1 **FIRST CAUSE OF ACTION**

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

3 71. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 70, inclusive.

5 72. By placing the Products into the stream of commerce, each Defendant is a
6 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

7 73. Lead is a chemical listed by the State of California as known to cause
8 cancer and birth defects or other reproductive harm.

9 74. 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
11 of the Products being exposed to Lead contained in the Products.

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

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

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

20 **PRAYER FOR RELIEF**

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

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

25 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
26 preliminarily and permanently enjoin Defendants from offering the Products for sale in
27 California with sufficient quantities of Lead such that users of the Products are exposed to a
28 “significant amount” of Lead under Proposition 65 without providing prior clear and reasonable

1 warnings, as CEH shall specify in further application to the Court;

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

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

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

9 Dated: June 24, 2009

Respectfully submitted,

10 LEXINGTON LAW GROUP

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12 Eric S. Somers
13 Attorneys for Plaintiff
14 CENTER FOR ENVIRONMENTAL HEALTH

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