

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 15 2010

CLERK OF SUPERIOR COURT  
By: \_\_\_\_\_

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

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

Case No. RG 09-459448

13 Plaintiff, )

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

14 v. )

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

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

(Other)

1 USA, INC.; ROSETTI HANDBAGS AND )  
ACCESSORIES, LTD.; ROSS STORES, INC.; )  
2 SAN DIEGO HAT COMPANY; SEARS, )  
ROEBUCK AND CO.; STEVEN MADDEN )  
3 LTD.; STEVEN MADDEN RETAIL, INC.; )  
TARGET CORPORATION; TOKYO BAY, )  
4 INC.; TRI-COASTAL DESIGN GROUP INC.; )  
URBAN BRANDS, INC.; WAL-MART )  
5 STORES, INC.; and Defendant DOES 1 through )  
500, inclusive, )

6  
7 Defendants. )  
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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 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 and other reproductive harm. Such exposures have occurred, and continue to occur,  
9 through the manufacture, distribution, sale and/or use of Defendants' wallets, handbags, purses  
10 and clutches made with leather, vinyl or imitation leather materials (the "Products"). Consumers,  
11 including pregnant women, are exposed 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. is a person in the course of doing  
9 business within the meaning of Health & Safety Code §25249.11. A.I.J.J. Enterprises, Inc.  
10 manufactures, distributes and/or sells the Products for sale or use in California.

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

14           7. Defendant ALDO GROUP INC. is a person in the course of doing  
15 business within the meaning of Health & Safety Code §25249.11. Aldo Group Inc.  
16 manufactures, distributes and/or sells the Products for sale or use in California.

17           8. Defendant ALDO U.S. INC. is a person in the course of doing business  
18 within the meaning of Health & Safety Code §25249.11. Aldo U.S. Inc. manufactures,  
19 distributes and/or sells the Products for sale or use in California.

20           9. Defendant ASHLEY STEWART LTD. is a person in the course of doing  
21 business within the meaning of Health & Safety Code §25249.11. Ashley Stewart Ltd.  
22 manufactures, distributes and/or sells the Products for sale or use in California.

23           10. Defendant BAKERS FOOTWEAR GROUP, INC. is a person in the  
24 course of doing business within the meaning of Health & Safety Code §25249.11. Bakers  
25 Footwear Group, Inc. manufactures, distributes and/or sells the Products for sale or use in  
26 California.

27           11. Defendant CELS ENTERPRISES, INC. DBA CHINESE LAUNDRY is a  
28 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

1 Cels Enterprises, Inc. dba Chinese Laundry manufactures, distributes and/or sells the Products  
2 for sale or use in California.

3 12. Defendant DSW SHOE WAREHOUSE, INC. is a person in the course of  
4 doing business within the meaning of Health & Safety Code §25249.11. DSW Shoe Warehouse,  
5 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

6 13. Defendant FANTASIA ACCESSORIES, LTD. is a person in the course of  
7 doing business within the meaning of Health & Safety Code §25249.11. Fantasia Accessories,  
8 Ltd. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

21 18. Defendant HADDAD ACCESSORIES, LLC is a person in the course of  
22 doing business within the meaning of Health & Safety Code §25249.11. Haddad Accessories,  
23 LLC manufactures, distributes and/or sells the Products for sale or use in California.

24 19. Defendant HADDAD ACCESSORIES INDUSTRIES LTD. is a person in  
25 the course of doing business within the meaning of Health & Safety Code §25249.11. Haddad  
26 Accessories Industries Ltd. manufactures, distributes and/or sells the Products for sale or use in  
27 California.

28 20. Defendant THE HADDAD APPAREL GROUP, LTD. is a person in the

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

4 21. Defendant J.C. PENNEY CORPORATION, INC. is a person in the course  
5 of doing business within the meaning of Health & Safety Code §25249.11. J.C. Penney  
6 Corporation, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

7 22. Defendant JONES APPAREL GROUP, INC. is a person in the course of  
8 doing business within the meaning of Health & Safety Code §25249.11. Jones Apparel Group,  
9 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

10 23. Defendant JONES RETAIL CORPORATION is a person in the course of  
11 doing business within the meaning of Health & Safety Code §25249.11. Jones Retail  
12 Corporation manufactures, distributes and/or sells the Products for sale or use in California.

13 24. Defendant KATE SPADE LLC is a person in the course of doing business  
14 within the meaning of Health & Safety Code §25249.11. Kate Spade LLC manufactures,  
15 distributes and/or sells the Products for sale or use in California.

16 25. Defendant KOHL'S CORPORATION is a person in the course of doing  
17 business within the meaning of Health & Safety Code §25249.11. Kohl's Corporation  
18 manufactures, distributes and/or sells the Products for sale or use in California.

19 26. Defendant KOHL'S DEPARTMENT STORES, INC. is a person in the  
20 course of doing business within the meaning of Health & Safety Code §25249.11. Kohl's  
21 Department Stores, Inc. manufactures, distributes and/or sells the Products for sale or use in  
22 California.

23 27. Defendant LERNER NEW YORK, INC. is a person in the course of doing  
24 business within the meaning of Health & Safety Code §25249.11. Lerner New York, Inc.  
25 manufactures, distributes and/or sells the Products for sale or use in California.

26 28. Defendant LIZ CLAIBORNE, INC. is a person in the course of doing  
27 business within the meaning of Health & Safety Code §25249.11. Liz Claiborne, Inc.  
28 manufactures, distributes and/or sells the Products for sale or use in California.

1           29. Defendant MACY'S, INC. DBA MACY'S STORES OF CALIFORNIA is  
2 a person in the course of doing business within the meaning of Health & Safety Code §25249.11.  
3 Macy's, Inc. dba Macy's Stores of California manufactures, distributes and/or sells the Products  
4 for sale or use in California.

5           30. Defendant MACY'S DEPARTMENT STORES, INC. is a person in the  
6 course of doing business within the meaning of Health & Safety Code §25249.11. Macy's  
7 Department Stores, Inc. manufactures, distributes and/or sells the Products for sale or use in  
8 California.

9           31. Defendant THE NEW 5-7-9 AND BEYOND, INC. is a person in the  
10 course of doing business within the meaning of Health & Safety Code §25249.11. The New 5-7-  
11 9 and Beyond, Inc. manufactures, distributes and/or sells the Products for sale or use in  
12 California.

13           32. Defendant NINE WEST FOOTWEAR CORPORATION is a person in the  
14 course of doing business within the meaning of Health & Safety Code §25249.11. Nine West  
15 Footwear Corporation manufactures, distributes and/or sells the Products for sale or use in  
16 California.

17           33. Defendant QUIKSILVER, INC. is a person in the course of doing business  
18 within the meaning of Health & Safety Code §25249.11. Quiksilver, Inc. manufactures,  
19 distributes and/or sells the Products for sale or use in California.

20           34. Defendant QUIKSILVER AMERICAS, INC. is a person in the course of  
21 doing business within the meaning of Health & Safety Code §25249.11. Quiksilver Americas,  
22 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

23           35. Defendant QS WHOLESALE, INC. is a person in the course of doing  
24 business within the meaning of Health & Safety Code §25249.11. QS Wholesale, Inc.  
25 manufactures, distributes and/or sells the Products for sale or use in California.

26           36. Defendant RAINBOW APPAREL DISTRIBUTION CENTER CORP. is a  
27 person in the course of doing business within the meaning of Health & Safety Code §25249.11.  
28 Rainbow Apparel Distribution Center Corp. manufactures, distributes and/or sells the Products

1 for sale or use in California.

2           37. Defendant RAINBOW USA, INC. is a person in the course of doing  
3 business within the meaning of Health & Safety Code §25249.11. Rainbow USA, Inc.  
4 manufactures, distributes and/or sells the Products for sale or use in California.

5           38. Defendant ROSETTI HANDBAGS AND ACCESSORIES, LTD. is a  
6 person in the course of doing business within the meaning of Health & Safety Code §25249.11.  
7 Rosetti Handbags and Accessories, Ltd. manufactures, distributes and/or sells the Products for  
8 sale or use in California.

9           39. Defendant ROSS STORES, INC. is a person in the course of doing  
10 business within the meaning of Health & Safety Code §25249.11. Ross Stores, Inc.  
11 manufactures, distributes and/or sells the Products for sale or use in California.

12           40. Defendant SAN DIEGO HAT COMPANY is a person in the course of  
13 doing business within the meaning of Health & Safety Code §25249.11. San Diego Hat  
14 Company manufactures, distributes and/or sells the Products for sale or use in California.

15           41. Defendant SEARS, ROEBUCK AND CO. is a person in the course of  
16 doing business within the meaning of Health & Safety Code §25249.11. Sears, Roebuck and Co.  
17 manufactures, distributes and/or sells the Products for sale or use in California.

18           42. Defendant STEVEN MADDEN LTD. is a person in the course of doing  
19 business within the meaning of Health & Safety Code §25249.11. Steven Madden Ltd.  
20 manufactures, distributes and/or sells the Products for sale or use in California.

21           43. Defendant STEVEN MADDEN RETAIL, INC. is a person in the course  
22 of doing business within the meaning of Health & Safety Code §25249.11. Steven Madden  
23 Retail, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

24           44. Defendant TARGET CORPORATION is a person in the course of doing  
25 business within the meaning of Health & Safety Code §25249.11. Target Corporation  
26 manufactures, distributes and/or sells the Products for sale or use in California.

27           45. Defendant TOKYO BAY, INC. is a person in the course of doing business  
28 within the meaning of Health & Safety Code §25249.11. Tokyo Bay, Inc. manufactures,



1 play and substantial justice.

2 54. Venue is proper in the Alameda Superior Court because one or more of the  
3 violations arise in the County of Alameda.

4 **BACKGROUND FACTS**

5 55. 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 56. To effectuate this goal, Proposition 65 prohibits exposing people to  
9 chemicals listed by the State of California as known to cause cancer, birth defects or other  
10 reproductive harm without a “clear and reasonable warning” unless the business responsible for  
11 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6  
12 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 57. 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. 27 California Code of Regulations (“C.C.R.”) §27001(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. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

25 58. 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. 27 C.C.R.

1 §27001(c); Health & Safety Code §25249.10(b).

2 59. Some of the Products are designed for and marketed to children. Young  
3 children are also exposed to Lead from the Products when they touch or play with Products that  
4 are owned or used by their parents or caretakers. In addition, young children are exposed to Lead  
5 from the Products when they eat food that is stored or carried in the Products or touch or play  
6 with non-food items that are stored or carried in the Products. Additional childhood exposures to  
7 Lead occur when children touch their hands to their mouths after their hands have touched the  
8 Products or items stored or carried in the Products.

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

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

1 Doses of Lead in Childhood: An 11-Year Follow-up Report,” *New England Journal of Medicine*  
2 322:83-88, 1990.

3 62. Lead exposures for pregnant women are also of particular concern in light  
4 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.  
5 Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
6 Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, “Reduced  
7 Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental Health*  
8 *Perspectives* 114:5, 2006.

9 63. Lead is found in the fabric and/or material from which many of the  
10 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather  
11 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in  
12 the Products and in the chemicals used in the leather tanning process. Lead is also found in the  
13 metallic components such as zippers and zipper pulls used on some of the Products.

14 64. Defendants’ Products contain sufficient quantities of Lead such that  
15 consumers, including pregnant women and children, who use, touch and/or handle the Products  
16 are exposed to Lead through the average use of the Products. The route of exposure for the  
17 violations is direct ingestion when consumers place the Products or items that have been stored  
18 in the Products in their mouths; ingestion via hand-to-mouth contact after consumers use, touch  
19 and/or handle the Products or items that have been stored in the Products; and dermal absorption  
20 directly through the skin when consumers use, touch and/or handle the Products or items that  
21 have been stored in the Products.

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

26 66. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
27 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
28 the District Attorneys of every county in California, the City Attorneys of every California city

1 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
2 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following  
3 information: (1) the name and address of each violator; (2) the statute violated; (3) the time  
4 period during which violations occurred; (4) specific descriptions of the violations, including (a)  
5 the routes of exposure to Lead from the Products, and (b) the specific type of products sold and  
6 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed  
7 chemical that is the subject of the violations described in each Notice.

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

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

25           69. Defendants both know and intend that individuals, including pregnant  
26 women and children, will use, touch and/or handle the Products, thus exposing them to Lead.

27           70. Under Proposition 65, an exposure is “knowing” where the party  
28 responsible for such exposure has:

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

4 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
5 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
6 §12201).

7 71. No clear and reasonable warning is provided with the Products regarding  
8 the carcinogenic or reproductive hazards of Lead.

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

11 73. Nevertheless, Defendants continue to expose consumers, including  
12 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the  
13 carcinogenic and/or reproductive hazards of Lead.

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

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

#### 21 FIRST CAUSE OF ACTION

##### 22 (Violations of the Health & Safety Code §25249.6)

23 76. CEH realleges and incorporates by reference as if specifically set forth  
24 herein Paragraphs 1 through 75, inclusive.

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

27 78. Lead is a chemical listed by the State of California as known to cause  
28 cancer and birth defects or other reproductive harm.



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

Dated: January 15, 2010

Respectfully submitted,

LEXINGTON LAW GROUP



Eric S. Somers  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH