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6 CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 19 2010

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10
11 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

12)
13 Plaintiff,)

14 v.)

15 BAG BAZAAR, LTD.; A-LIST, INC.;)
ACCESSORY EXCHANGE LLC; ADIDAS)
16 AMERICA, INC.; ADIDAS PROMOTIONAL)
RETAIL OPERATIONS, INC.; AE RETAIL)
WEST LLC; AMAZON.COM, INC.;)
17 AMERICAN EAGLE OUTFITTERS, INC.;)
AMERICAN PROCUREMENT CO., INC.;)
18 AMICI ACCESSORIES, LTD.;)
AMITY/ROLFS, INC.; AUDIGIER BRAND)
19 MANAGEMENT GROUP, LLC;)
BAEKGAARD LIMITED OF INDIANA; BEBE)
20 STORES, INC.; BENETTON USA)
CORPORATION DBA UNITED COLORS OF)
21 BENETTON; BILLABONG RETAIL, INC.;)
BILLABONG USA HOLDINGS PTY LTD.;)
22 BILLABONG USA INVESTMENTS PTY)
LTD.; BLOOMINGDALE'S, INC.; BROWN)
23 SHOE COMPANY, INC.; BURLEIGH POINT,)
LTD.; CALIFORNIA ONAX; CALVIN KLEIN,)
24 INC.; CBI DISTRIBUTING CORP.;)
CHARLOTTE RUSSE, INC.; CHARLOTTE)
25 RUSSE HOLDING, INC.; CHARMING)
SHOPPES, INC.; CHENSON INDUSTRIAL)
26 CO. LTD., INC.; CHRISTIAN AUDIGIER,)
INC.; CLAIRE'S BOUTIQUES, INC.;)
27 CLAIRE'S STORES, INC.; COLDWATER)
CREEK, INC.; COLDWATER CREEK U.S.)
28 INC.; COMECO, INC.; COMECO, LLC; CVS)

Case No. PG10494517

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

(Other)

1 CAREMARK CORPORATION; CVS)
PHARMACY, INC.; DIESEL U.S.A., INC.;)
2 DISTEX, INC.; THE DRESS BARN, INC.;)
EASTBAY, INC.; EBAGS, INC.; ECKO)
3 DIRECT, LLC; EFASHION SOLUTIONS,)
LLC; ELEMENT SKATEBOARDS, INC.;)
4 EXPRESS, LLC; FASHION BUG OF)
CALIFORNIA, INC.; FASHION BUG RETAIL)
5 COMPANIES, INC.; FASHION SHOE)
LICENSING LLC; FOOT LOCKER, INC.;)
6 FOREIGN EXCHANGE, INC.; FOX HEAD,)
INC.; FRENCH CONNECTION GROUP, INC.;)
7 FRENCH CONNECTION GROUP PLC;)
FURMIR, LLC; GLOBAL BRAND)
8 HOLDINGS, LLC; GUESS?, INC.; GUESS?)
RETAIL, INC.; HARDY LIFE, LLC; HOT)
9 TOPIC, INC.; HOT TOPIC)
MERCHANDISING, INC.; HSN, INC.;)
10 ICONIX BRAND GROUP, INC.;)
INDONESIAN IMPORTS, INC.; JILL)
11 STUART, INC.; JILL STUART)
INTERNATIONAL, LLC; KEMISTRE 8, LLC;)
12 KMART CORPORATION; LANE BRYANT,)
INC.; LIMITED STORES, LLC; LODIS)
13 ACCESSORIES, INC.; LOEHMANN'S, INC.;)
LONG RAP INC.; MANGO NY, INC.; MARC)
14 ECKO ENTERPRISES ACCESSORIES, LLC;)
MARC JACOBS INTERNATIONAL, L.L.C.;)
15 MAXX ACCESSORIES, INC.; MELIE)
BIANCO ACCESSORIES, INC.;)
16 METROPARK USA, INC.; MIAS FASHION)
MANUFACTURING COMPANY, INC.;)
17 MICHAEL KORS (USA), INC.; MICHAEL)
KORS STORES (CALIFORNIA), INC.; MODE)
18 PLUS; MONDANI HANDBAGS &)
ACCESSORIES, INC.; NAKAJIMA USA,)
19 INC.; NORDSTROM, INC.;)
OVERSTOCK.COM, INC.; PACIFIC)
20 SUNWEAR OF CALIFORNIA, INC.; PACIFIC)
SUNWEAR STORES CORP.; PACIFIC)
21 WORLDWIDE, INC.; PAYLESS)
SHOESOURCE, INC.; PERLINA)
22 HANDBAGS, INC.; PHAT FASHIONS, INC.;)
PHAT FASHIONS, LLC; PHILLIPS-VAN)
23 HEUSEN CORPORATION; RAY)
ENTERPRISES OF CHESAPEAKE WALK,)
24 INC. DBA HOBO INTERNATIONAL;)
ROBERT TALBOTT, INC.; ROC APPAREL)
25 GROUP LLC; RUE21, INC.; RUN)
ATHLETICS INTERNATIONAL, LLC; THE)
26 SAK; SAKS & COMPANY; SAKS)
INCORPORATED; SANRIO, INC.; SHARIF)
27 DESIGNS, LTD.; SHARIF VISION, INC.;)
SIGNATURE STYLES, LLC; SILHOUETTE)
28 CLOTHING, INC.; SOUTH CONE, INC.;)

1 SPIEGEL CATALOG HOLDINGS)
CORPORATION; SUPER TRADER, INC.;)
2 TANDY BRANDS ACCESSORIES, INC.;)
TANDY BRANDS HANDBAGS)
3 ACCESSORIES, INC.; TED BAKER)
LIMITED; TED BAKER NEW YORK, INC.;)
4 T.J. MAXX OF CA, LLC; THE TJX)
COMPANIES, INC.; TORY BURCH LLC;)
5 TUMI, INC.; TUMI STORES, INC.; VANS,)
INC.; VF OUTDOOR, INC.; V.F.)
6 CORPORATION; VICTORIA'S SECRET)
DIRECT BRAND MANAGEMENT, LLC;)
7 VICTORIA'S SECRET STORES, LLC;)
VIEWMARK USA, INC.; VOLCOM, INC.;)
8 VOLCOM RETAIL, INC.; WESTPORT)
CORPORATION; THE WET SEAL, INC.; THE)
9 WET SEAL RETAIL, INC.; WILSONS)
LEATHER DIRECT, INC.; WILSONS)
10 LEATHER HOLDINGS INC.; WITH YOU,)
INC.; WORLDWIDE DREAMS LLC;)
11 WORLDWIDE DYNASTY, INC.; Y & S)
HANDBAGS, INC.; ZAPPOS.COM, INC.;)
12 ZUMIEZ, INC.; and Defendant DOES 1 through)
500, inclusive,)

13 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 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/or use of Defendants' wallets, handbags, purses and clutches
10 made with leather, vinyl or imitation leather materials (the "Products"). Consumers, including
11 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-LIST, INC. is a person in the course of doing business within
9 the meaning of Health & Safety Code §25249.11. A-List, Inc. manufactures, distributes and/or
10 sells the Products for sale or use in California.

11 6. Defendant ACCESSORY EXCHANGE LLC is a person in the course of
12 doing business within the meaning of Health & Safety Code §25249.11. Accessory Exchange
13 LLC manufactures, distributes and/or sells the Products for sale or use in California.

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

17 8. Defendant ADIDAS PROMOTIONAL RETAIL OPERATIONS, INC. is a
18 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
19 Adidas Promotional Retail Operations, Inc. manufactures, distributes and/or sells the Products
20 for sale or use in California.

21 9. Defendant AE RETAIL WEST LLC is a person in the course of doing
22 business within the meaning of Health & Safety Code §25249.11. AE Retail West LLC
23 manufactures, distributes and/or sells the Products for sale or use in California.

24 10. Defendant AMAZON.COM, INC. is a person in the course of doing
25 business within the meaning of Health & Safety Code §25249.11. Amazon.com, Inc.
26 manufactures, distributes and/or sells the Products for sale or use in California.

27 11. Defendant AMERICAN EAGLE OUTFITTERS, INC. is a person in the
28 course of doing business within the meaning of Health & Safety Code §25249.11. American

1 Eagle Outfitters, Inc. manufactures, distributes and/or sells the Products for sale or use in
2 California.

3 12. Defendant AMERICAN PROCUREMENT CO., INC. is a person in the
4 course of doing business within the meaning of Health & Safety Code §25249.11. American
5 Procurement Co., Inc. manufactures, distributes and/or sells the Products for sale or use in
6 California.

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

10 14. Defendant AMITY/ROLFS, INC. is a person in the course of doing
11 business within the meaning of Health & Safety Code §25249.11. Amity/Rolfs, Inc.
12 manufactures, distributes and/or sells the Products for sale or use in California.

13 15. Defendant AUDIGIER BRAND MANAGEMENT GROUP, LLC is a
14 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
15 Audigier Brand Management Group, LLC manufactures, distributes and/or sells the Products for
16 sale or use in California.

17 16. Defendant BAEKGAARD LIMITED OF INDIANA is a person in the
18 course of doing business within the meaning of Health & Safety Code §25249.11. Baekgaard
19 Limited of Indiana manufactures, distributes and/or sells the Products for sale or use in
20 California.

21 17. Defendant BAG BAZAAR, LTD. is a person in the course of doing
22 business within the meaning of Health & Safety Code §25249.11. Bag Bazaar, Ltd.
23 manufactures, distributes and/or sells the Products for sale or use in California.

24 18. Defendant BEBE STORES, INC. is a person in the course of doing
25 business within the meaning of Health & Safety Code §25249.11. Bebe Stores, Inc.
26 manufactures, distributes and/or sells the Products for sale or use in California.

27 19. Defendant BENETTON USA CORPORATION DBA UNITED COLORS
28 OF BENETTON is a person in the course of doing business within the meaning of Health &

1 Safety Code §25249.11. Benetton USA Corporation dba United Colors of Benetton
2 manufactures, distributes and/or sells the Products for sale or use in California.

3 20. Defendant BILLABONG RETAIL, INC. is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. Billabong Retail, Inc.
5 manufactures, distributes and/or sells the Products for sale or use in California.

6 21. Defendant BILLABONG USA HOLDINGS PTY LTD. is a person in the
7 course of doing business within the meaning of Health & Safety Code §25249.11. Billabong
8 USA Holdings PTY Ltd. manufactures, distributes and/or sells the Products for sale or use in
9 California.

10 22. Defendant BILLABONG USA INVESTMENTS PTY LTD. is a person in
11 the course of doing business within the meaning of Health & Safety Code §25249.11. Billabong
12 USA Investments PTY Ltd. manufactures, distributes and/or sells the Products for sale or use in
13 California.

14 23. Defendant BLOOMINGDALE'S, INC. is a person in the course of doing
15 business within the meaning of Health & Safety Code §25249.11. Bloomingdale's, Inc.
16 manufactures, distributes and/or sells the Products for sale or use in California.

17 24. Defendant BROWN SHOE COMPANY, INC. is a person in the course of
18 doing business within the meaning of Health & Safety Code §25249.11. Brown Shoe Company,
19 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

20 25. Defendant BURLEIGH POINT, LTD. is a person in the course of doing
21 business within the meaning of Health & Safety Code §25249.11. Burleigh Point, Ltd.
22 manufactures, distributes and/or sells the Products for sale or use in California.

23 26. Defendant CALIFORNIA ONAX is a person in the course of doing
24 business within the meaning of Health & Safety Code §25249.11. California Onax
25 manufactures, distributes and/or sells the Products for sale or use in California.

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

1 28. Defendant CBI DISTRIBUTING CORP. is a person in the course of doing
2 business within the meaning of Health & Safety Code §25249.11. CBI Distributing Corp.
3 manufactures, distributes and/or sells the Products for sale or use in California.

4 29. Defendant CHARLOTTE RUSSE, INC. is a person in the course of doing
5 business within the meaning of Health & Safety Code §25249.11. Charlotte Russe, Inc.
6 manufactures, distributes and/or sells the Products for sale or use in California.

7 30. Defendant CHARLOTTE RUSSE HOLDING, INC. is a person in the
8 course of doing business within the meaning of Health & Safety Code §25249.11. Charlotte
9 Russe Holding, Inc. manufactures, distributes and/or sells the Products for sale or use in
10 California.

11 31. Defendant CHARMING SHOPPES, INC. is a person in the course of
12 doing business within the meaning of Health & Safety Code §25249.11. Charming Shoppes, Inc.
13 manufactures, distributes and/or sells the Products for sale or use in California.

14 32. Defendant CHENSON INDUSTRIAL CO. LTD., INC. is a person in the
15 course of doing business within the meaning of Health & Safety Code §25249.11. Chenson
16 Industrial Co. Ltd., Inc. manufactures, distributes and/or sells the Products for sale or use in
17 California.

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

21 34. Defendant CLAIRE'S BOUTIQUES, INC. is a person in the course of
22 doing business within the meaning of Health & Safety Code §25249.11. Claire's Boutiques, Inc.
23 manufactures, distributes and/or sells the Products for sale or use in California.

24 35. Defendant CLAIRE'S STORES, INC. is a person in the course of doing
25 business within the meaning of Health & Safety Code §25249.11. Claire's Stores, Inc.
26 manufactures, distributes and/or sells the Products for sale or use in California.

27 36. Defendant COLDWATER CREEK, INC. is a person in the course of
28 doing business within the meaning of Health & Safety Code §25249.11. Coldwater Creek, Inc.

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

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

5 38. Defendant COMECO, INC. is a person in the course of doing business
6 within the meaning of Health & Safety Code §25249.11. Comeco, Inc. manufactures, distributes
7 and/or sells the Products for sale or use in California.

8 39. Defendant COMECO, LLC is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. Comeco, LLC manufactures,
10 distributes and/or sells the Products for sale or use in California.

11 40. Defendant CVS CAREMARK CORPORATION is a person in the course
12 of doing business within the meaning of Health & Safety Code §25249.11. CVS Caremark
13 Corporation manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

23 44. Defendant THE DRESS BARN, INC. is a person in the course of doing
24 business within the meaning of Health & Safety Code §25249.11. The Dress Barn, Inc.
25 manufactures, distributes and/or sells the Products for sale or use in California.

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

1 46. Defendant EBAGS, INC. is a person in the course of doing business
2 within the meaning of Health & Safety Code §25249.11. eBags, Inc. manufactures, distributes
3 and/or sells the Products for sale or use in California.

4 47. Defendant ECKO DIRECT, LLC is a person in the course of doing
5 business within the meaning of Health & Safety Code §25249.11. Ecko Direct, LLC
6 manufactures, distributes and/or sells the Products for sale or use in California.

7 48. Defendant EFASHION SOLUTIONS, LLC is a person in the course of
8 doing business within the meaning of Health & Safety Code §25249.11. eFashion Solutions,
9 LLC manufactures, distributes and/or sells the Products for sale or use in California.

10 49. Defendant ELEMENT SKATEBOARDS, INC. is a person in the course of
11 doing business within the meaning of Health & Safety Code §25249.11. Element Skateboards,
12 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

16 51. Defendant FASHION BUG OF CALIFORNIA, INC. is a person in the
17 course of doing business within the meaning of Health & Safety Code §25249.11. Fashion Bug
18 of California, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

19 52. Defendant FASHION BUG RETAIL COMPANIES, INC. is a person in
20 the course of doing business within the meaning of Health & Safety Code §25249.11. Fashion
21 Bug Retail Companies, Inc. manufactures, distributes and/or sells the Products for sale or use in
22 California.

23 53. Defendant FASHION SHOE LICENSING LLC is a person in the course
24 of doing business within the meaning of Health & Safety Code §25249.11. Fashion Shoe
25 Licensing LLC manufactures, distributes and/or sells the Products for sale or use in California.

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

1 55. Defendant FOREIGN EXCHANGE, INC. is a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11. Foreign Exchange, Inc.
3 manufactures, distributes and/or sells the Products for sale or use in California.

4 56. Defendant FOX HEAD, INC. is a person in the course of doing business
5 within the meaning of Health & Safety Code §25249.11. Fox Head, Inc. manufactures,
6 distributes and/or sells the Products for sale or use in California.

7 57. Defendant FRENCH CONNECTION GROUP, INC. is a person in the
8 course of doing business within the meaning of Health & Safety Code §25249.11. French
9 Connection Group, Inc. manufactures, distributes and/or sells the Products for sale or use in
10 California.

11 58. Defendant FRENCH CONNECTION GROUP PLC is a person in the
12 course of doing business within the meaning of Health & Safety Code §25249.11. French
13 Connection Group PLC manufactures, distributes and/or sells the Products for sale or use in
14 California.

15 59. Defendant FURMIR, LLC is a person in the course of doing business
16 within the meaning of Health & Safety Code §25249.11. Furmir, LLC manufactures, distributes
17 and/or sells the Products for sale or use in California.

18 60. Defendant GLOBAL BRAND HOLDINGS, LLC is a person in the course
19 of doing business within the meaning of Health & Safety Code §25249.11. Global Brand
20 Holdings, LLC manufactures, distributes and/or sells the Products for sale or use in California.

21 61. Defendant GUESS?, INC. is a person in the course of doing business
22 within the meaning of Health & Safety Code §25249.11. Guess?, Inc. manufactures, distributes
23 and/or sells the Products for sale or use in California.

24 62. Defendant GUESS? RETAIL, INC. is a person in the course of doing
25 business within the meaning of Health & Safety Code §25249.11. Guess? Retail, Inc.
26 manufactures, distributes and/or sells the Products for sale or use in California.

27 63. Defendant HARDY LIFE, LLC is a person in the course of doing business
28 within the meaning of Health & Safety Code §25249.11. Hardy Life, LLC manufactures,

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

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

5 65. Defendant HOT TOPIC MERCHANDISING, INC. is a person in the
6 course of doing business within the meaning of Health & Safety Code §25249.11. Hot Topic
7 Merchandising, Inc. manufactures, distributes and/or sells the Products for sale or use in
8 California.

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

12 67. Defendant ICONIX BRAND GROUP, INC. is a person in the course of
13 doing business within the meaning of Health & Safety Code §25249.11. Iconix Brand Group,
14 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

15 68. Defendant INDONESIAN IMPORTS, INC. is a person in the course of
16 doing business within the meaning of Health & Safety Code §25249.11. Indonesian Imports, Inc.
17 manufactures, distributes and/or sells the Products for sale or use in California.

18 69. Defendant JILL STUART, INC. is a person in the course of doing business
19 within the meaning of Health & Safety Code §25249.11. Jill Stuart, Inc. manufactures,
20 distributes and/or sells the Products for sale or use in California.

21 70. Defendant JILL STUART INTERNATIONAL, LLC is a person in the
22 course of doing business within the meaning of Health & Safety Code §25249.11. Jill Stuart
23 International, LLC manufactures, distributes and/or sells the Products for sale or use in
24 California.

25 71. Defendant KEMISTRE 8, LLC is a person in the course of doing business
26 within the meaning of Health & Safety Code §25249.11. Kemistre 8, LLC manufactures,
27 distributes and/or sells the Products for sale or use in California.

28 72. Defendant KMART CORPORATION is a person in the course of doing

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

3 73. Defendant LANE BRYANT, INC. is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. Lane Bryant, Inc.
5 manufactures, distributes and/or sells the Products for sale or use in California.

6 74. Defendant LIMITED STORES, LLC is a person in the course of doing
7 business within the meaning of Health & Safety Code §25249.11. Limited Stores, LLC
8 manufactures, distributes and/or sells the Products for sale or use in California.

9 75. Defendant LODIS ACCESSORIES, INC. is a person in the course of
10 doing business within the meaning of Health & Safety Code §25249.11. Lodis Accessories, Inc.
11 manufactures, distributes and/or sells the Products for sale or use in California.

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

15 77. Defendant LONG RAP INC. is a person in the course of doing business
16 within the meaning of Health & Safety Code §25249.11. Long Rap Inc. manufactures,
17 distributes and/or sells the Products for sale or use in California.

18 78. Defendant MANGO NY, INC. is a person in the course of doing business
19 within the meaning of Health & Safety Code §25249.11. Mango NY, Inc. manufactures,
20 distributes and/or sells the Products for sale or use in California.

21 79. Defendant MARC ECKO ENTERPRISES ACCESSORIES, LLC is a
22 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
23 Marc Ecko Enterprises Accessories, LLC manufactures, distributes and/or sells the Products for
24 sale or use in California.

25 80. Defendant MARC JACOBS INTERNATIONAL, L.L.C. is a person in the
26 course of doing business within the meaning of Health & Safety Code §25249.11. Marc Jacobs
27 International, L.L.C. manufactures, distributes and/or sells the Products for sale or use in
28 California.

1 81. Defendant MAXX ACCESSORIES, INC. is a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11. Maxx Accessories, Inc.
3 manufactures, distributes and/or sells the Products for sale or use in California.

4 82. Defendant MELIE BIANCO ACCESSORIES, INC. is a person in the
5 course of doing business within the meaning of Health & Safety Code §25249.11. Melie Bianco
6 Accessories, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

7 83. Defendant METROPARK USA, INC. is a person in the course of doing
8 business within the meaning of Health & Safety Code §25249.11. Metropark USA, Inc.
9 manufactures, distributes and/or sells the Products for sale or use in California.

10 84. Defendant MIAS FASHION MANUFACTURING COMPANY, INC. is a
11 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
12 Mias Fashion Manufacturing Company, Inc. manufactures, distributes and/or sells the Products
13 for sale or use in California.

14 85. Defendant MICHAEL KORS (USA), INC. is a person in the course of
15 doing business within the meaning of Health & Safety Code §25249.11. Michael Kors (USA),
16 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

17 86. Defendant MICHAEL KORS STORES (CALIFORNIA), INC. is a person
18 in the course of doing business within the meaning of Health & Safety Code §25249.11. Michael
19 Kors Stores (California), Inc. manufactures, distributes and/or sells the Products for sale or use in
20 California.

21 87. Defendant MODE PLUS is a person in the course of doing business within
22 the meaning of Health & Safety Code §25249.11. Mode Plus manufactures, distributes and/or
23 sells the Products for sale or use in California.

24 88. Defendant MONDANI HANDBAGS & ACCESSORIES, INC. is a person
25 in the course of doing business within the meaning of Health & Safety Code §25249.11.
26 Mondani Handbags & Accessories, Inc. manufactures, distributes and/or sells the Products for
27 sale or use in California.

28 89. Defendant NAKAJIMA USA, INC. is a person in the course of doing

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

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

6 91. Defendant OVERSTOCK.COM, INC. is a person in the course of doing
7 business within the meaning of Health & Safety Code §25249.11. Overstock.com, Inc.
8 manufactures, distributes and/or sells the Products for sale or use in California.

9 92. Defendant PACIFIC SUNWEAR OF CALIFORNIA, INC. is a person in
10 the course of doing business within the meaning of Health & Safety Code §25249.11. Pacific
11 Sunwear of California, Inc. manufactures, distributes and/or sells the Products for sale or use in
12 California.

13 93. Defendant PACIFIC SUNWEAR STORES CORP. is a person in the
14 course of doing business within the meaning of Health & Safety Code §25249.11. Pacific
15 Sunwear Stores Corp. manufactures, distributes and/or sells the Products for sale or use in
16 California.

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

20 95. Defendant PAYLESS SHOESOURCE, INC. is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Payless Shoesource,
22 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

1 98. Defendant PHAT FASHIONS, LLC is a person in the course of doing
2 business within the meaning of Health & Safety Code §25249.11. Phat Fashions, LLC
3 manufactures, distributes and/or sells the Products for sale or use in California.

4 99. Defendant PHILLIPS-VAN HEUSEN CORPORATION is a person in the
5 course of doing business within the meaning of Health & Safety Code §25249.11. Phillips-Van
6 Heusen Corporation manufactures, distributes and/or sells the Products for sale or use in
7 California.

8 100. Defendant RAY ENTERPRISES OF CHESAPEAKE WALK, INC. DBA
9 HOBO INTERNATIONAL is a person in the course of doing business within the meaning of
10 Health & Safety Code §25249.11. Ray Enterprises of Chesapeake Walk, Inc. dba Hobo
11 International manufactures, distributes and/or sells the Products for sale or use in California.

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

15 102. Defendant ROC APPAREL GROUP LLC is a person in the course of
16 doing business within the meaning of Health & Safety Code §25249.11. Roc Apparel Group
17 LLC manufactures, distributes and/or sells the Products for sale or use in California.

18 103. Defendant RUE21, INC. is a person in the course of doing business within
19 the meaning of Health & Safety Code §25249.11. rue21, Inc. manufactures, distributes and/or
20 sells the Products for sale or use in California.

21 104. Defendant RUN ATHLETICS INTERNATIONAL, LLC is a person in the
22 course of doing business within the meaning of Health & Safety Code §25249.11. Run Athletics
23 International, LLC manufactures, distributes and/or sells the Products for sale or use in
24 California.

25 105. Defendant THE SAK is a person in the course of doing business within the
26 meaning of Health & Safety Code §25249.11. The Sak manufactures, distributes and/or sells the
27 Products for sale or use in California.

28 106. Defendant SAKS & COMPANY is a person in the course of doing

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

3 107. Defendant SAKS INCORPORATED is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. Saks Incorporated
5 manufactures, distributes and/or sells the Products for sale or use in California.

6 108. Defendant SANRIO, INC. is a person in the course of doing business
7 within the meaning of Health & Safety Code §25249.11. Sanrio, Inc. manufactures, distributes
8 and/or sells the Products for sale or use in California.

9 109. Defendant SHARIF DESIGNS, LTD. is a person in the course of doing
10 business within the meaning of Health & Safety Code §25249.11. Sharif Designs, Ltd.
11 manufactures, distributes and/or sells the Products for sale or use in California.

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

15 111. Defendant SIGNATURE STYLES, LLC is a person in the course of doing
16 business within the meaning of Health & Safety Code §25249.11. Signature Styles, LLC
17 manufactures, distributes and/or sells the Products for sale or use in California.

18 112. Defendant SILHOUETTE CLOTHING, INC. is a person in the course of
19 doing business within the meaning of Health & Safety Code §25249.11. Silhouette Clothing,
20 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

21 113. Defendant SOUTH CONE, INC. is a person in the course of doing
22 business within the meaning of Health & Safety Code §25249.11. South Cone, Inc.
23 manufactures, distributes and/or sells the Products for sale or use in California.

24 114. Defendant SPIEGEL CATALOG HOLDINGS CORPORATION is a
25 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
26 Spiegel Catalog Holdings Corporation manufactures, distributes and/or sells the Products for sale
27 or use in California.

28 115. Defendant SUPER TRADER, INC. is a person in the course of doing

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

3 116. Defendant TANDY BRANDS ACCESSORIES, INC. is a person in the
4 course of doing business within the meaning of Health & Safety Code §25249.11. Tandy Brands
5 Accessories, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

6 117. Defendant TANDY BRANDS HANDBAGS ACCESSORIES, INC. is a
7 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
8 Tandy Brands Handbags Accessories, Inc. manufactures, distributes and/or sells the Products for
9 sale or use in California.

10 118. Defendant TED BAKER LIMITED is a person in the course of doing
11 business within the meaning of Health & Safety Code §25249.11. Ted Baker Limited
12 manufactures, distributes and/or sells the Products for sale or use in California.

13 119. Defendant TED BAKER NEW YORK, INC. is a person in the course of
14 doing business within the meaning of Health & Safety Code §25249.11. Ted Baker New York,
15 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

16 120. Defendant T.J. MAXX OF CA, LLC is a person in the course of doing
17 business within the meaning of Health & Safety Code §25249.11. T.J. Maxx of CA, LLC
18 manufactures, distributes and/or sells the Products for sale or use in California.

19 121. Defendant THE TJX COMPANIES, INC. is a person in the course of
20 doing business within the meaning of Health & Safety Code §25249.11. The TJX Companies,
21 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

22 122. Defendant TORY BURCH LLC is a person in the course of doing
23 business within the meaning of Health & Safety Code §25249.11. Tory Burch LLC
24 manufactures, distributes and/or sells the Products for sale or use in California.

25 123. Defendant TUMI, INC. is a person in the course of doing business within
26 the meaning of Health & Safety Code §25249.11. Tumi, Inc. manufactures, distributes and/or
27 sells the Products for sale or use in California.

28 124. Defendant TUMI STORES, INC. is a person in the course of doing

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

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

6 126. Defendant VF OUTDOOR, INC. is a person in the course of doing
7 business within the meaning of Health & Safety Code §25249.11. VF Outdoor, Inc.
8 manufactures, distributes and/or sells the Products for sale or use in California.

9 127. Defendant V.F. CORPORATION is a person in the course of doing
10 business within the meaning of Health & Safety Code §25249.11. V.F. Corporation
11 manufactures, distributes and/or sells the Products for sale or use in California.

12 128. Defendant VICTORIA'S SECRET DIRECT BRAND MANAGEMENT,
13 LLC is a person in the course of doing business within the meaning of Health & Safety Code
14 §25249.11. Victoria's Secret Direct Brand Management, LLC manufactures, distributes and/or
15 sells the Products for sale or use in California.

16 129. Defendant VICTORIA'S SECRET STORES, LLC is a person in the
17 course of doing business within the meaning of Health & Safety Code §25249.11. Victoria's
18 Secret Stores, LLC manufactures, distributes and/or sells the Products for sale or use in
19 California.

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

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

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

1 133. Defendant WESTPORT CORPORATION is a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11. Westport Corporation
3 manufactures, distributes and/or sells the Products for sale or use in California.

4 134. Defendant THE WET SEAL, INC. is a person in the course of doing
5 business within the meaning of Health & Safety Code §25249.11. The Wet Seal, Inc.
6 manufactures, distributes and/or sells the Products for sale or use in California.

7 135. Defendant THE WET SEAL RETAIL, INC. is a person in the course of
8 doing business within the meaning of Health & Safety Code §25249.11. The Wet Seal Retail,
9 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

10 136. Defendant WILSONS LEATHER DIRECT, INC. is a person in the course
11 of doing business within the meaning of Health & Safety Code §25249.11. Wilsons Leather
12 Direct, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

13 137. Defendant WILSONS LEATHER HOLDINGS INC. is a person in the
14 course of doing business within the meaning of Health & Safety Code §25249.11. Wilsons
15 Leather Holdings Inc. manufactures, distributes and/or sells the Products for sale or use in
16 California.

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

20 139. Defendant WORLDWIDE DREAMS LLC is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Worldwide Dreams
22 LLC manufactures, distributes and/or sells the Products for sale or use in California.

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

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

1 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
2 defects, or other reproductive harm.” Proposition 65, §1(b).

3 151. To effectuate this goal, Proposition 65 prohibits exposing people to
4 chemicals listed by the State of California as known to cause cancer, birth defects or other
5 reproductive harm without a “clear and reasonable warning” unless the business responsible for
6 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6
7 states, in pertinent part:

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

12 152. On February 27, 1987, the State of California officially listed lead as a
13 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
14 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
15 the developing fetus, “female reproductive toxicity,” which means harm to the female
16 reproductive system, and “male reproductive toxicity,” which means harm to the male
17 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,
18 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
19 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
20 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

21 153. On October 1, 1992, the State of California officially listed lead and lead
22 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
23 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
24 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
25 §27001(c); Health & Safety Code §25249.10(b).

26 154. Some of the Products are designed for and marketed to children. Young
27 children are also exposed to Lead from the Products when they touch or play with Products that
28 are owned or used by their parents or caretakers. In addition, young children are exposed to Lead
from the Products when they eat food that is stored or carried in the Products or touch or play

1 with non-food items that are stored or carried in the Products. Additional childhood exposures to
2 Lead occur when children touch their hands to their mouths after their hands have touched the
3 Products or items stored or carried in the Products.

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

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

26 157. Lead exposures for pregnant women are also of particular concern in light
27 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.
28 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental

1 Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, “Reduced
2 Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental Health*
3 *Perspectives* 114:5, 2006.

4 158. Lead is found in the fabric and/or material from which many of the
5 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather
6 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in
7 the Products and in the chemicals used in the leather tanning process. Lead is also found in the
8 metallic components such as zippers and zipper pulls used on some of the Products.

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

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

21 161. More than sixty days prior to naming each Defendant in this lawsuit, CEH
22 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
23 the District Attorneys of every county in California, the City Attorneys of every California city
24 with a population greater than 750,000 and to each of the named Defendants. In compliance with
25 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
26 information: (1) the name and address of each violator; (2) the statute violated; (3) the time
27 period during which violations occurred; (4) specific descriptions of the violations, including (a)
28 the routes of exposure to Lead from the Products, and (b) the specific type of products sold and

1 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
2 chemical that is the subject of the violations described in each Notice.

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

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

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

22 165. Under Proposition 65, an exposure is “knowing” where the party
23 responsible for such exposure has:

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

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

1 §12201).

2 166. No clear and reasonable warning is provided with the Products regarding
3 the carcinogenic or reproductive hazards of Lead.

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

6 168. Nevertheless, Defendants continue to expose consumers, including
7 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the
8 carcinogenic and/or reproductive hazards of Lead.

9 169. CEH has engaged in good-faith efforts to resolve the claims alleged herein
10 prior to filing this complaint.

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

16 **FIRST CAUSE OF ACTION**

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

18 171. CEH realleges and incorporates by reference as if specifically set forth
19 herein Paragraphs 1 through 170, inclusive.

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

22 173. Lead is a chemical listed by the State of California as known to cause
23 cancer and birth defects or other reproductive harm.

24 174. Defendants know that average use of the Products will expose users of the
25 Products to Lead. Defendants intend that the Products be used in a manner that results in users
26 of the Products being exposed to Lead contained in the Products.

27 175. The Defendants have failed, and continue to fail, to provide prior clear and
28 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of

1 the Products.

2 176. By committing the acts alleged above, the Defendants have at all times
3 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
4 individuals to Lead without first giving clear and reasonable warnings to such individuals
5 regarding the carcinogenicity and reproductive toxicity of Lead.

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

7 **PRAYER FOR RELIEF**

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

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

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

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

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

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

24 Dated: January 15, 2010

Respectfully submitted,

25 LEXINGTON LAW GROUP

26 

27 Eric S. Somers
28 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH