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**ENDORSED
FILED
ALAMEDA COUNTY**

JAN 19 2010

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

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

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

Case No. REG 10494513

12 Plaintiff,)

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

13 v.)

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

14 ZAPPOS.COM, INC.; ALDO GROUP INC.;)
15 ALDO U.S. INC.; C. & J. CLARK AMERICA,)
INC.; C. & J. CLARK RETAIL, INC.;)
16 CAMUTO CONSULTING INC.; CAMUTO)
GROUP - VCJS LLC; CELS ENTERPRISES,)
17 INC. DBA CHINESE LAUNDRY;)
CHARLOTTE RUSSE, INC.; CHARLOTTE)
18 RUSSE HOLDING, INC.; ELLIE SHOES, INC.;)
FOREVER 21 RETAIL, INC.; FRENCH)
19 CONNECTION GROUP, INC.; FRENCH)
CONNECTION GROUP PLC; HALLOWEEN)
20 EXPRESS, LLC; HOT ON TIME LLC; JONES)
APPAREL GROUP, INC.; JONES RETAIL)
21 CORPORATION; JUICY COUTURE, INC.;)
KENNETH COLE PRODUCTIONS, INC.;)
22 LEON MAX, INC.; LIZ CLAIBORNE, INC.;)
LOEHMANN'S, INC.; NINE WEST)
23 FOOTWEAR CORPORATION;)
NORDSTROM, INC.; RUE21, INC.; SEARS,)
24 ROEBUCK AND CO.; SHIEKH, LLC; WAL-)
MART STORES, INC.; THE WET SEAL, INC.;)
25 THE WET SEAL RETAIL, INC.; and Defendant)
DOES 1 through 500, inclusive,)

(Other)

26 Defendants.)
27)
28)

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' footwear made with leather, vinyl or
10 imitation leather materials (the "Products"). Consumers and workers in California, including
11 pregnant women, are exposed to Lead when they wear, 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 and workers in California, many of whom are
18 pregnant women, to 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 ALDO GROUP INC. is a person in the course of doing
9 business within the meaning of Health & Safety Code §25249.11. Aldo Group Inc.
10 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

17 8. Defendant C. & J. CLARK RETAIL, INC. is a person in the course of
18 doing business within the meaning of Health & Safety Code §25249.11. C. & J. Clark Retail,
19 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

23 10. Defendant CAMUTO GROUP - VCJS LLC is a person in the course of
24 doing business within the meaning of Health & Safety Code §25249.11. Camuto Group - VCJS
25 LLC manufactures, distributes and/or sells the Products for sale or use in California.

26 11. Defendant CELS ENTERPRISES, INC. DBA CHINESE LAUNDRY is a
27 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
28 Cels Enterprises, Inc. dba Chinese Laundry manufactures, distributes and/or sells the Products

1 for sale or use in California.

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

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

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

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

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

19 17. Defendant FRENCH CONNECTION GROUP PLC is a person in the
20 course of doing business within the meaning of Health & Safety Code §25249.11. French
21 Connection Group PLC manufactures, distributes and/or sells the Products for sale or use in
22 California.

23 18. Defendant HALLOWEEN EXPRESS, LLC is a person in the course of
24 doing business within the meaning of Health & Safety Code §25249.11. Halloween Express,
25 LLC manufactures, distributes and/or sells the Products for sale or use in California.

26 19. Defendant HOT ON TIME LLC is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Hot On Time LLC
28 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

10 23. Defendant KENNETH COLE PRODUCTIONS, INC. is a person in the
11 course of doing business within the meaning of Health & Safety Code §25249.11. Kenneth Cole
12 Productions, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

22 27. Defendant NINE WEST FOOTWEAR CORPORATION is a person in the
23 course of doing business within the meaning of Health & Safety Code §25249.11. Nine West
24 Footwear Corporation manufactures, distributes and/or sells the Products for sale or use in
25 California.

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

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

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

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

10 32. Defendant WAL-MART STORES, INC. is a person in the course of doing
11 business within the meaning of Health & Safety Code §25249.11. Wal-Mart Stores, Inc.
12 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

19 35. Defendant ZAPPOS.COM, INC. is a person in the course of doing
20 business within the meaning of Health & Safety Code §25249.11. Zappos.com, Inc.
21 manufactures, distributes and/or sells the Products for sale or use in California.

22 36. DOES 1 through 250 are each a person in the course of doing business
23 within the meaning of Health & Safety Code §25249.11. DOES 1 through 250 manufacture,
24 distribute and/or sell the Products for sale or use in California.

25 37. DOES 251 through 500 are each a person in the course of doing business
26 within the meaning of Health & Safety Code §25249.11. DOES 251 through 500 manufacture,
27 distribute and/or sell the Products for sale or use in California. DOES 251 through 500 have
28 workplaces in California, and are therefore liable for both consumer and occupational exposures

1 under Proposition 65.

2 38. The defendants identified in paragraphs 5 through 35 and DOES 1 through
3 500 are collectively referred to herein as "Defendants."

4 **JURISDICTION AND VENUE**

5 39. The Court has jurisdiction over this action pursuant to Health & Safety
6 Code §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
7 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
8 to other trial courts.

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

15 41. Venue is proper in the Alameda Superior Court because one or more of the
16 violations arise in the County of Alameda.

17 **BACKGROUND FACTS**

18 42. The People of the State of California have declared by initiative under
19 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth
20 defects, or other reproductive harm." Proposition 65, §1(b).

21 43. To effectuate this goal, Proposition 65 prohibits exposing people to
22 chemicals listed by the State of California as known to cause cancer, birth defects or other
23 reproductive harm without a "clear and reasonable warning" unless the business responsible for
24 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6
25 states, in pertinent part:

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

1 44. On February 27, 1987, the State of California officially listed lead as a
2 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
3 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to
4 the developing fetus, "female reproductive toxicity," which means harm to the female
5 reproductive system, and "male reproductive toxicity," which means harm to the male
6 reproductive system. 27 California Code of Regulations ("C.C.R.") §27001(c). On February 27,
7 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
8 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
9 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

10 45. On October 1, 1992, the State of California officially listed lead and lead
11 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
12 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
13 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
14 §27001(c); Health & Safety Code §25249.10(b).

15 46. Some of the Products are designed for and marketed to children. Young
16 children are also exposed to Lead from the Products when they touch or play with Products that
17 are owned, touched or handled by their parents or caretakers. In addition, young children are
18 exposed to Lead from the Products when they touch their hands to their mouths after their hands
19 have touched or handled the Products.

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

1 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

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

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

20 50. Lead is found in the fabric and/or material from which many of the
21 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather
22 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in
23 the Products and in the chemicals used in the leather tanning process.

24 51. Defendants' Products contain sufficient quantities of Lead such that
25 individuals, including pregnant women and children, who wear, touch and/or handle the Products
26 are exposed to Lead through the average use of the Products. Consumer exposures to Lead occur
27 through ingestion via hand-to-mouth contact after consumers touch and/or handle the Products
28 and dermal absorption directly through the skin when consumers wear, touch and/or handle the

1 Products. Occupational exposures to Lead occur by dermal absorption directly through the skin
2 when workers manufacture, assemble, display, sell, store, assist consumers trying on, or
3 otherwise touch or handle the Products. Occupational exposures also occur through hand-to-
4 mouth contact after workers touch and/or handle the Products.

5 52. No clear and reasonable warning is provided with the Products regarding
6 the carcinogenic or reproductive hazards of Lead.

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

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

21 55. In compliance with 8 C.C.R. §338(b), to the extent occupational exposures
22 have occurred, each of CEH's 60-Day Notices to the California Attorney General, the District
23 Attorneys of every county in California, the City Attorneys of every California city with a
24 population greater than 750,000 and to the named Defendants included the following statement:

25 This notice alleges the violation of Proposition 65 with respect to
26 occupational exposures governed by the California State Plan for
27 Occupational Safety and Health. The State Plan incorporates the
28 provisions of Proposition 65, as approved by Federal OSHA on
June 6, 1997. This approval specifically placed certain conditions

1 with regard to occupational exposures on Proposition 65, including
2 that it does not apply to the conduct of manufacturers occurring
3 outside the State of California. The approval also provides that an
4 employer may use the means of compliance in the general hazard
5 communication requirements to comply with Proposition 65. It
6 also requires that supplemental enforcement is subject to the
7 supervision of the California Occupational Safety and Health
8 Administration. Accordingly, any settlement, civil complaint, or
9 substantive court orders in this matter must be submitted to the
10 Attorney General.

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

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

28 58. Defendants both know and intend that consumers and workers in
California, including pregnant women, will wear, touch and/or handle the Products, thus
exposing them to Lead.

59. Under Proposition 65, an exposure is “knowing” where the party

1 responsible for such exposure has:

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

5 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
6 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
7 §12201).

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

10 61. Nevertheless, Defendants continue to expose consumers and workers in
11 California, including pregnant women, to Lead without prior clear and reasonable warnings
12 regarding the carcinogenic and/or reproductive hazards of Lead.

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

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

20 **FIRST CAUSE OF ACTION**

21 **(Violations of the Health & Safety Code §25249.6 – Consumer Exposures)**

22 **(Against All Defendants)**

23 64. CEH realleges and incorporates by reference as if specifically set forth
24 herein Paragraphs 1 through 63, inclusive.

25 65. 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 66. Lead is a chemical listed by the State of California as known to cause
28 cancer and birth defects or other reproductive harm.

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

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

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

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

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

11 **SECOND CAUSE OF ACTION**

12 **(Violations of the Health & Safety Code §25249.6 – Occupational Exposures)**
13 **(Defendants Aldo Group Inc., Aldo U.S. Inc., C. & J. Clark America, Inc., C. & J. Clark**
14 **Retail, Inc., Cels Enterprises, Inc. dba Chinese Laundry, Charlotte Russe, Inc., Charlotte**
15 **Russe Holding, Inc., Forever 21 Retail, Inc., French Connection Group, Inc., French**
16 **Connection Group PLC, Halloween Express, LLC, Jones Apparel Group, Inc., Jones Retail**
17 **Corporation, Juicy Couture, Inc., Kenneth Cole Productions, Inc., Leon Max, Inc., Liz**
18 **Claiborne, Inc., Loehmann’s, Inc., Nine West Footwear Corporation, Nordstrom, Inc.,**
19 **Rue21, Inc., Sears, Roebuck and Co., Shiekh LLC, Wal-Mart Stores, Inc., The Wet Seal,**
20 **Inc., The Wet Seal Retail, Inc. and DOES 251 through 500)**

21 70. Plaintiff realleges and incorporates by reference as if specifically set forth
22 herein Paragraphs 1 through 69, inclusive.

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

25 72. Lead is a chemical listed by the State of California as known to cause
26 cancer and birth defects or other reproductive harm.

27 73. Defendants Aldo Group Inc., Aldo U.S. Inc., C. & J. Clark America, Inc.,
28 C. & J. Clark Retail, Inc., Cels Enterprises, Inc. dba Chinese Laundry, Charlotte Russe, Inc.,
Charlotte Russe Holding, Inc., Forever 21 Retail, Inc., French Connection Group, Inc., French
Connection Group PLC, Halloween Express, LLC, Jones Apparel Group, Inc., Jones Retail
Corporation, Juicy Couture, Inc., Kenneth Cole Productions, Inc., Leon Max, Inc., Liz Claiborne,

1 Inc., Loehmann's, Inc., Nine West Footwear Corporation, Nordstrom, Inc., Rue21, Inc., Sears,
2 Roebuck and Co., Shiekh LLC, Wal-Mart Stores, Inc., The Wet Seal, Inc., The Wet Seal Retail,
3 Inc. and DOES 251 through 500 (collectively, the "Occupational Exposure Defendants") know
4 that the Products will expose workers in California to Lead. The Occupational Exposure
5 Defendants intend that the Products be touched or handled in a manner that results in workers in
6 California being exposed to Lead contained in the Products.

7 74. The Occupational Exposure Defendants have failed, and continue to fail,
8 to provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity
9 of the Lead in the Products to workers in California that touch or handle the Products.

10 75. By committing the acts alleged above, the Occupational Exposure
11 Defendants have at all times relevant to this complaint violated Proposition 65 by knowingly and
12 intentionally exposing workers in California to Lead in their workplaces without first giving clear
13 and reasonable warnings to such individuals regarding the carcinogenicity and reproductive
14 toxicity of Lead.

15 Wherefore, Plaintiff prays judgment against the Occupational Exposure
16 Defendants, as set forth hereafter.

17 **PRAYER FOR RELIEF**

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

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

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

27 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
28 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of

1 Products sold by Defendants, as CEH shall specify in further application to the Court;

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

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

6
7 Dated: January 15, 2010

Respectfully submitted,

8 LEXINGTON LAW GROUP

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