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6 CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 28 2010**

CLERK OF THE SUPERIOR COURT  
By Molly Kautz

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

10  
11 CENTER FOR ENVIRONMENTAL HEALTH, ) Lead Case No. RG 09-459448  
a non-profit corporation, )  
12 )  
Plaintiff, ) [Consolidated with Case No. RG 10-  
13 ) 494289; Case No. RG 10-494513; and Case  
v. ) No. RG 10-494517]  
14 )  
15 LULU NYC LLC, *et al.*, and Defendant DOES 1 ) **FIRST AMENDED COMPLAINT –**  
through 500, inclusive, ) **CENTER FOR ENVIRONMENTAL**  
16 ) **HEALTH V. ZAPPOS.COM, INC.;**  
Defendants. ) **CASE NO. RG 10-494513**  
17 ) Health & Safety Code §25249.6, *et seq.*  
(Other)  
18 )  
And Consolidated Cases. )  
19 )  
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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' footwear made with leather,  
10 vinyl or imitation leather materials (the "Products"). Consumers and workers in California,  
11 including 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 AE RETAIL WEST LLC is a person in the course of doing  
9 business within the meaning of Health & Safety Code §25249.11. AE Retail West LLC  
10 manufactures, distributes and/or sells the Products for sale or use in California.

11           6. Defendant A.I.J.J. ENTERPRISES, INC. is a person in the course of doing  
12 business within the meaning of Health & Safety Code §25249.11. A.I.J.J. Enterprises, 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 AMERICAN EAGLE OUTFITTERS, INC. is a person in the  
21 course of doing business within the meaning of Health & Safety Code §25249.11. American  
22 Eagle Outfitters, Inc. manufactures, distributes and/or sells the Products for sale or use in  
23 California.

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

27           11. Defendant BATH & BODY WORKS LLC is a person in the course of  
28 doing business within the meaning of Health & Safety Code §25249.11. Bath & Body Works

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

2 12. Defendant BATH & BODY WORKS DIRECT, INC. is a person in the  
3 course of doing business within the meaning of Health & Safety Code §25249.11. Bath & Body  
4 Works Direct, Inc. manufactures, distributes and/or sells the Products for sale or use in  
5 California.

6 13. Defendant BBC APPAREL GROUP, LLC is a person in the course of  
7 doing business within the meaning of Health & Safety Code §25249.11. BBC Apparel Group,  
8 LLC manufactures, distributes and/or sells the Products for sale or use in California.

9 14. Defendant BETSEY JOHNSON LLC is a person in the course of doing  
10 business within the meaning of Health & Safety Code §25249.11. Betsey Johnson LLC  
11 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

27 20. Defendant C. & J. CLARK RETAIL, INC. is a person in the course of  
28 doing business within the meaning of Health & Safety Code §25249.11. C. & J. Clark Retail,

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

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

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

8 23. Defendant CELS ENTERPRISES, INC. DBA CHINESE LAUNDRY is a  
9 person in the course of doing business within the meaning of Health & Safety Code §25249.11.  
10 Cels Enterprises, Inc. dba Chinese Laundry manufactures, distributes and/or sells the Products  
11 for sale or use in California.

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

15 25. Defendant CHARLOTTE RUSSE HOLDING, INC. is a person in the  
16 course of doing business within the meaning of Health & Safety Code §25249.11. Charlotte  
17 Russe Holding, Inc. manufactures, distributes and/or sells the Products for sale or use in  
18 California.

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

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

25 28. Defendant COLE HAAN is a person in the course of doing business  
26 within the meaning of Health & Safety Code §25249.11. Cole Haan manufactures, distributes  
27 and/or sells the Products for sale or use in California.

28 29. Defendant COLE HAAN COMPANY STORE is a person in the course of

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

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

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

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

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

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

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

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

25 37. Defendant FRENCH CONNECTION GROUP PLC is a person in the  
26 course of doing business within the meaning of Health & Safety Code §25249.11. French  
27 Connection Group PLC manufactures, distributes and/or sells the Products for sale or use in  
28 California.

1           38. Defendant GOTHAM LICENSING GROUP, LLC is a person in the  
2 course of doing business within the meaning of Health & Safety Code §25249.11. Gotham  
3 Licensing Group, LLC manufactures, distributes and/or sells the Products for sale or use in  
4 California.

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

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

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

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

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

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

23           45. Defendant JAG FOOTWEAR, ACCESSORIES AND RETAIL  
24 CORPORATION is a person in the course of doing business within the meaning of Health &  
25 Safety Code §25249.11. JAG Footwear, Accessories and Retail Corporation manufactures,  
26 distributes and/or sells the Products for sale or use in California.

27           46. Defendant JONES APPAREL GROUP, INC. is a person in the course of  
28 doing business within the meaning of Health & Safety Code §25249.11. Jones Apparel Group,

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

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

5 48. Defendant JONES JEANSWEAR GROUP, INC. is a person in the course  
6 of doing business within the meaning of Health & Safety Code §25249.11. Jones Jeanswear  
7 Group, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

8 49. Defendant J.P. ORIGINAL CORPORATION is a person in the course of  
9 doing business within the meaning of Health & Safety Code §25249.11. J.P. Original  
10 Corporation manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

20 53. Defendant KMART CORPORATION is a person in the course of doing  
21 business within the meaning of Health & Safety Code §25249.11. Kmart Corporation  
22 manufactures, distributes and/or sells the Products for sale or use in California.

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

27 55. Defendant LEON MAX, INC. is a person in the course of doing business  
28 within the meaning of Health & Safety Code §25249.11. Leon Max, Inc. manufactures,



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

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

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

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

11           59. Defendant LUCKY BRAND DUNGAREES, INC. is a person in the  
12 course of doing business within the meaning of Health & Safety Code §25249.11. Lucky Brand  
13 Dungarees, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

24           63. Defendant MAURICES INCORPORATED is a person in the course of  
25 doing business within the meaning of Health & Safety Code §25249.11. Maurices Incorporated  
26 manufactures, distributes and/or sells the Products for sale or use in California.

27           64. Defendant METROPARK USA, INC. is a person in the course of doing  
28 business within the meaning of Health & Safety Code §25249.11. Metropark USA, Inc.

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

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

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

9           67. Defendant MOSINGER COMPANY, L.L.C. is a person in the course of  
10 doing business within the meaning of Health & Safety Code §25249.11. Mosinger Company,  
11 L.L.C. manufactures, distributes and/or sells the Products for sale or use in California.

12           68. Defendant THE NEW 5-7-9 AND BEYOND, INC. is a person in the  
13 course of doing business within the meaning of Health & Safety Code §25249.11. The New 5-7-  
14 9 and Beyond, Inc. manufactures, distributes and/or sells the Products for sale or use in  
15 California.

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

19           70. Defendant ONE DISTRIBUTION, LLC is a person in the course of doing  
20 business within the meaning of Health & Safety Code §25249.11. One Distribution, LLC  
21 manufactures, distributes and/or sells the Products for sale or use in California.

22           71. Defendant ORLY SHOE CORP. is a person in the course of doing  
23 business within the meaning of Health & Safety Code §25249.11. Orly Shoe Corp.  
24 manufactures, distributes and/or sells the Products for sale or use in California.

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

28           73. Defendant PHILLIPS-VAN HEUSEN CORPORATION is a person in the

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

4 74. Defendant RAINBOW APPAREL DISTRIBUTION CENTER CORP. is a  
5 person in the course of doing business within the meaning of Health & Safety Code §25249.11.  
6 Rainbow Apparel Distribution Center Corp. manufactures, distributes and/or sells the Products  
7 for sale or use in California.

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

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

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

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

20 79. Defendant SAKS & COMPANY is a person in the course of doing  
21 business within the meaning of Health & Safety Code §25249.11. Saks & Company  
22 manufactures, distributes and/or sells the Products for sale or use in California.

23 80. Defendant SAKS DIRECT, LLC is a person in the course of doing  
24 business within the meaning of Health & Safety Code §25249.11. Saks Direct, LLC  
25 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

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

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

19          88. Defendant URBAN BRANDS, INC. is a person in the course of doing  
20 business within the meaning of Health & Safety Code §25249.11. Urban Brands, Inc.  
21 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

28          91. Defendant VICTORIA'S SECRET STORES, LLC is a person in the

1 course of doing business within the meaning of Health & Safety Code §25249.11. Victoria's  
2 Secret Stores, LLC manufactures, distributes and/or sells the Products for sale or use in  
3 California.

4 92. Defendant VICTORIA'S SECRET DIRECT BRAND MANAGEMENT,  
5 LLC is a person in the course of doing business within the meaning of Health & Safety Code  
6 §25249.11. Victoria's Secret Direct Brand Management, LLC manufactures, distributes and/or  
7 sells the Products for sale or use in California.

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

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

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

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

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

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

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

1 100. DOES 251 through 500 are each a person in the course of doing business  
2 within the meaning of Health & Safety Code §25249.11. DOES 251 through 500 manufacture,  
3 distribute and/or sell the Products for sale or use in California. DOES 251 through 500 have  
4 workplaces in California, and are therefore liable for both consumer and occupational exposures  
5 under Proposition 65.

6 101. The defendants identified in paragraphs 5 through 98 and DOES 1 through  
7 500 are collectively referred to herein as “Defendants.”

8 **JURISDICTION AND VENUE**

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

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

19 104. Venue is proper in the Alameda Superior Court because one or more of the  
20 violations arise in the County of Alameda.

21 **BACKGROUND FACTS**

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

25 106. To effectuate this goal, Proposition 65 prohibits exposing people to  
26 chemicals listed by the State of California as known to cause cancer, birth defects or other  
27 reproductive harm without a “clear and reasonable warning” unless the business responsible for  
28 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6

1 states, in pertinent part:

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

5 107. On February 27, 1987, the State of California officially listed lead as a  
6 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
7 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to  
8 the developing fetus, "female reproductive toxicity," which means harm to the female  
9 reproductive system, and "male reproductive toxicity," which means harm to the male  
10 reproductive system. 27 California Code of Regulations ("C.C.R.") §27001(c). On February 27,  
11 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead  
12 became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
13 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

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

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

24 110. Young children are especially susceptible to the toxic effects of Lead.  
25 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from  
26 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children  
27 absorb and retain more Lead in proportion to their weight than do adults. Young children also  
28 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal

1 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even  
2 small doses received in childhood, over time, can cause adverse health impacts, including but not  
3 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such  
4 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby  
5 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

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

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

24           113. Lead is found in the fabric and/or material from which many of the  
25 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather  
26 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in  
27 the Products and in the chemicals used in the leather tanning process.

28           114. Defendants' Products contain sufficient quantities of Lead such that



1 individuals, including pregnant women and children, who wear, touch and/or handle the Products  
2 are exposed to Lead through the average use of the Products. Consumer exposures to Lead occur  
3 through ingestion via hand-to-mouth contact after consumers touch and/or handle the Products  
4 and dermal absorption directly through the skin when consumers wear, touch and/or handle the  
5 Products. Occupational exposures to Lead occur by dermal absorption directly through the skin  
6 when workers manufacture, assemble, display, sell, store, assist consumers trying on, or  
7 otherwise touch or handle the Products. Occupational exposures also occur through hand-to-  
8 mouth contact after workers touch and/or handle the Products.

9           115. No clear and reasonable warning is provided with the Products regarding  
10 the carcinogenic or reproductive hazards of Lead.

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

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

25           118. In compliance with 8 C.C.R. §338(b), to the extent occupational exposures  
26 are alleged, each of CEH's 60-Day Notices to the California Attorney General, the District  
27 Attorneys of every county in California, the City Attorneys of every California city with a  
28 population greater than 750,000 and to the named Defendants included the following statement:

1 This notice alleges the violation of Proposition 65 with respect to  
2 occupational exposures governed by the California State Plan for  
3 Occupational Safety and Health. The State Plan incorporates the  
4 provisions of Proposition 65, as approved by Federal OSHA on  
5 June 6, 1997. This approval specifically placed certain conditions  
6 with regard to occupational exposures on Proposition 65, including  
7 that it does not apply to the conduct of manufacturers occurring  
8 outside the State of California. The approval also provides that an  
9 employer may use the means of compliance in the general hazard  
10 communication requirements to comply with Proposition 65. It  
11 also requires that supplemental enforcement is subject to the  
12 supervision of the California Occupational Safety and Health  
13 Administration. Accordingly, any settlement, civil complaint, or  
14 substantive court orders in this matter must be submitted to the  
15 Attorney General.

11 119. 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.

24 120. 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

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

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

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

9           27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.,* Final  
10 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
11 §12201).

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

14           24. Nevertheless, Defendants continue to expose consumers and workers in  
15 California, including pregnant women, to Lead without prior clear and reasonable warnings  
16 regarding the carcinogenic and/or reproductive hazards of Lead.

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

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

24                                   **FIRST CAUSE OF ACTION**  
25                                   **(Violations of the Health & Safety Code §25249.6 – Consumer Exposures)**  
26                                   **(Against All Defendants)**

27           27. CEH realleges and incorporates by reference as if specifically set forth  
28 herein Paragraphs 1 through 126, inclusive.

          28. By placing the Products into the stream of commerce, each Defendant is a

1 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

2           129. Lead is a chemical listed by the State of California as known to cause  
3 cancer and birth defects or other reproductive harm.

4           130. Defendants know that average use of the Products will expose users of the  
5 Products to Lead. Defendants intend that the Products be used in a manner that results in users  
6 of the Products being exposed to Lead contained in the Products.

7           131. Defendants have failed, and continue to fail, to provide prior clear and  
8 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead contained in  
9 the Products to users of the Products.

10           132. By committing the acts alleged above, Defendants have at all times  
11 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
12 individuals to Lead without first giving clear and reasonable warnings to such individuals  
13 regarding the carcinogenicity and reproductive toxicity of Lead.

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

15    **SECOND CAUSE OF ACTION**

16    **(Violations of the Health & Safety Code §25249.6 – Occupational Exposures)**

17 **(Defendants Aldo Group Inc., Aldo U.S. Inc., B. J. Vines, Inc., Betsey Johnson LLC, Brown**  
18 **Shoe Company, Inc., The Buckle, Inc., C. & J. Clark America, Inc., C. & J. Clark Retail,**  
19 **Inc., Camuto Consulting Inc., Cels Enterprises, Inc. dba Chinese Laundry, Charlotte**  
20 **Russe, Inc., Charlotte Russe Holding, Inc., Cole Haan, Cole Haan Company Store, DSW**  
21 **Shoe Warehouse, Inc., Ellie Shoes, Inc., Forever 21 Retail, Inc., French Connection Group,**  
22 **Inc., French Connection Group PLC, Halloween Express, LLC, Hot On Time LLC, JAG**  
23 **Footwear, Accessories and Retail Corporation, Jones Apparel Group, Inc., Juicy Couture,**  
24 **Inc., Kenneth Cole Productions, Inc., Kmart Corporation, Leon Max, Inc., Liz Claiborne,**  
25 **Inc., Loehmann's, Inc., Macy's, Inc., Macy's Department Stores, Inc., Nordstrom, Inc.,**  
26 **One Distribution, LLC, Ross Stores, Inc., rue21, Inc., Sears, Roebuck and Co., Shiekh**  
27 **LLC, Steven Madden Ltd., Steven Madden Retail, Inc., Supra Footwear, LLC, VCJS LLC,**  
28 **Wal-Mart Stores, Inc., The Wet Seal, Inc., The Wet Seal Retail, Inc., Zumiez, Inc. and**  
  **DOES 251 through 500)**

133. Plaintiff realleges and incorporates by reference as if specifically set forth  
herein Paragraphs 1 through 132, inclusive.

134. By placing the Products into the stream of commerce, each Defendant is a

1 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

2 135. Lead is a chemical listed by the State of California as known to cause  
3 cancer and birth defects or other reproductive harm.

4 136. Defendants Aldo Group Inc., Aldo U.S. Inc., B. J. Vines, Inc., Betsey  
5 Johnson LLC, Brown Shoe Company, Inc., The Buckle, Inc., C. & J. Clark America, Inc., C. & J.  
6 Clark Retail, Inc., Camuto Consulting Inc., Cels Enterprises, Inc. dba Chinese Laundry, Charlotte  
7 Russe, Inc., Charlotte Russe Holding, Inc., Cole Haan, Cole Haan Company Store, DSW Shoe  
8 Warehouse, Inc., Ellie Shoes, Inc., Forever 21 Retail, Inc., French Connection Group, Inc.,  
9 French Connection Group PLC, Halloween Express, LLC, Hot On Time LLC, JAG Footwear,  
10 Accessories and Retail Corporation, Jones Apparel Group, Inc., Juicy Couture, Inc., Kenneth  
11 Cole Productions, Inc., Kmart Corporation, Leon Max, Inc., Liz Claiborne, Inc., Loehmann's,  
12 Inc., Macy's, Inc., Macy's Department Stores, Inc., Nordstrom, Inc., One Distribution, LLC,  
13 Ross Stores, Inc., rue21, Inc., Sears, Roebuck and Co., Shiekh LLC, Steven Madden Ltd., Steven  
14 Madden Retail, Inc., Supra Footwear, LLC, VCJS LLC, Wal-Mart Stores, Inc., The Wet Seal,  
15 Inc., The Wet Seal Retail, Inc., Zumiez, Inc. and DOES 251 through 500 (collectively, the  
16 "Occupational Exposure Defendants") know that the Products will expose workers in California  
17 to Lead. Occupational Exposure Defendants intend that the Products be touched or handled in a  
18 manner that results in workers in California being exposed to Lead contained in the Products.

19 137. Occupational Exposure Defendants have failed, and continue to fail, to  
20 provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of  
21 the Lead in the Products to workers in California that touch or handle the Products.

22 138. By committing the acts alleged above, Occupational Exposure Defendants  
23 have at all times relevant to this complaint violated Proposition 65 by knowingly and  
24 intentionally exposing workers in California to Lead in their workplaces without first giving clear  
25 and reasonable warnings to such individuals regarding the carcinogenicity and reproductive  
26 toxicity of Lead.

27 Wherefore, Plaintiff prays judgment against Occupational Exposure Defendants,  
28 as set forth hereafter.

1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
7 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
8 California without providing prior clear and reasonable warnings, as CEH shall specify in further  
9 application to the Court;

10 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order  
11 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from the  
12 manufacture, distribution, sale and/or use of Products sold by Defendants, as CEH shall specify  
13 in further application to the Court;

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

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

18  
19 Dated: May 28, 2010

Respectfully submitted,

20 LEXINGTON LAW GROUP

21  
22   
23 Eric S. Somers  
24 Attorneys for Plaintiff  
25 CENTER FOR ENVIRONMENTAL HEALTH  
26  
27  
28