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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY  
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CLERK OF THE SUPERIOR COURT  
By Esther Coleman, Deputy

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

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

12 Plaintiff, )

13 v. )

14 )  
15 LULU NYC LLC, *et al.*, and Defendant DOES 1 )  
through 500, inclusive, )

16 Defendants. )

17 )  
18 And Consolidated Cases. )  
19 )  
20 )  
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Lead Case No. RG 09-459448

[Consolidated with Case No. RG 10-494289; Case No. RG 10-494513; and Case No. RG 10-494517]

**SECOND AMENDED COMPLAINT –  
CENTER FOR ENVIRONMENTAL  
HEALTH V. ZAPPOS.COM, INC.;  
CASE NO. RG 10-494513**

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

(Other)

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

23           10. Defendant AMERICAN EAGLE OUTFITTERS, INC. is a person in the  
24 course of doing business within the meaning of Health & Safety Code §25249.11. American  
25 Eagle Outfitters, Inc. manufactures, distributes and/or sells the Products for sale or use in  
26 California.

27           11. Defendant ANTEBI FOOTWEAR GROUP LLC is a person in the course  
28 of doing business within the meaning of Health & Safety Code §25249.11. Antebi Footwear

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

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

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

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

12 15. Defendant BATH & BODY WORKS LLC is a person in the course of  
13 doing business within the meaning of Health & Safety Code §25249.11. Bath & Body Works  
14 LLC manufactures, distributes and/or sells the Products for sale or use in California.

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

19 17. Defendant BBC INTERNATIONAL LLC is a person in the course of  
20 doing business within the meaning of Health & Safety Code §25249.11. BBC International LLC  
21 manufactures, distributes and/or sells the Products for sale or use in California.

22 18. Defendant BCBG MAX AZRIA GROUP, INC. is a person in the course of  
23 doing business within the meaning of Health & Safety Code §25249.11. BCBG Max Azria  
24 Group, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

28 20. Defendant BETSEY JOHNSON LLC is a person in the course of doing

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

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

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

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

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

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

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

21           27. Defendant THE BURTON CORPORATION is a person in the course of  
22 doing business within the meaning of Health & Safety Code §25249.11. The Burton Corporation  
23 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

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

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

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

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

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

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

27           38. Defendant COACH, INC. is a person in the course of doing business  
28 within the meaning of Health & Safety Code §25249.11. Coach, Inc. manufactures, distributes

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

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

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

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

11           42. Defendant COLE HAAN COMPANY STORE is a person in the course of  
12 doing business within the meaning of Health & Safety Code §25249.11. Cole Haan Company  
13 Store manufactures, distributes and/or sells the Products for sale or use in California.

14           43. Defendant CONNORS, FONG & MANCUSO, INC. AKA CONNORS  
15 FOOTWEAR, INC. is a person in the course of doing business within the meaning of Health &  
16 Safety Code §25249.11. Connors, Fong & Mancuso, Inc. aka Connors Footwear, Inc.  
17 manufactures, distributes and/or sells the Products for sale or use in California.

18           44. Defendant C.R.A. INT'L INDUSTRIAL INC. is a person in the course of  
19 doing business within the meaning of Health & Safety Code §25249.11. C.R.A. Int'l Industrial  
20 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

24           46. Defendant DOLCE VITA FOOTWEAR, INC. is a person in the course of  
25 doing business within the meaning of Health & Safety Code §25249.11. Dolce Vita Footwear,  
26 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

27           47. Defendant THE DONNA KARAN COMPANY LLC is a person in the  
28 course of doing business within the meaning of Health & Safety Code §25249.11. The Donna

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

3 48. Defendant THE DONNA KARAN COMPANY STORE LLC is a person  
4 in the course of doing business within the meaning of Health & Safety Code §25249.11. The  
5 Donna Karan Company Store LLC manufactures, distributes and/or sells the Products for sale or  
6 use in California.

7 49. Defendant DONNA KARAN INTERNATIONAL INC. is a person in the  
8 course of doing business within the meaning of Health & Safety Code §25249.11. Donna Karan  
9 International Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

22 54. Defendant ELAN POLO INC. is a person in the course of doing business  
23 within the meaning of Health & Safety Code §25249.11. Elan Polo Inc. manufactures,  
24 distributes and/or sells the Products for sale or use in California.

25 55. Defendant ELEGANCE ENTERPRISE CORPORATION is a person in  
26 the course of doing business within the meaning of Health & Safety Code §25249.11. Elegance  
27 Enterprise Corporation manufactures, distributes and/or sells the Products for sale or use in  
28 California.



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

4           57. Defendant E.M.S. TRADING INC. DBA MICHAEL ANTONIO  
5 FOOTWEAR GROUP is a person in the course of doing business within the meaning of Health  
6 & Safety Code §25249.11. E.M.S. Trading Inc. dba Michael Antonio Footwear Group  
7 manufactures, distributes and/or sells the Products for sale or use in California.

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

11           59. Defendant FASHION AVENUE is a person in the course of doing  
12 business within the meaning of Health & Safety Code §25249.11. Fashion Avenue  
13 manufactures, distributes and/or sells the Products for sale or use in California.

14           60. Defendant FASHION AVENUE, LLC is a person in the course of doing  
15 business within the meaning of Health & Safety Code §25249.11. Fashion Avenue, LLC  
16 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

5           66. Defendant FU FENG GROUP (HK) INVESTMENT LTD. is a person in  
6 the course of doing business within the meaning of Health & Safety Code §25249.11. Fu Feng  
7 Group (HK) Investment Ltd. manufactures, distributes and/or sells the Products for sale or use in  
8 California.

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

12           68. Defendant GOLDEN DELTA ENTERPRISES, INC. is a person in the  
13 course of doing business within the meaning of Health & Safety Code §25249.11. Golden Delta  
14 Enterprises, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

15           69. Defendant GOLDEN WEST FOOTWEAR INC. is a person in the course  
16 of doing business within the meaning of Health & Safety Code §25249.11. Golden West  
17 Footwear Inc. manufactures, distributes and/or sells the Products for sale or use in California.

18           70. Defendant G.O. MAX INTERNATIONAL, INC. is a person in the course  
19 of doing business within the meaning of Health & Safety Code §25249.11. G.O. Max  
20 International, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

21           71. 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           72. 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           73. Defendant HALLOWEEN EXPRESS, LLC is a person in the course of  
28 doing business within the meaning of Health & Safety Code §25249.11. Halloween Express,

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

2 74. Defendant HARDY WAY, LLC is a person in the course of doing  
3 business within the meaning of Health & Safety Code §25249.11. Hardy Way, LLC  
4 manufactures, distributes and/or sells the Products for sale or use in California.

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

8 76. Defendant H.H. BROWN SHOE COMPANY, INC. is a person in the  
9 course of doing business within the meaning of Health & Safety Code §25249.11. H.H. Brown  
10 Shoe Company, Inc. manufactures, distributes and/or sells the Products for sale or use in  
11 California.

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

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

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

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

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

28 82. Defendant JIMLAR CORPORATION is a person in the course of doing

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

3 83. Defendant JOHNNY APPLESEED'S, INC. is a person in the course of  
4 doing business within the meaning of Health & Safety Code §25249.11. Johnny Appleseed's,  
5 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

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

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

27 91. Defendant KIA INCORPORATED is a person in the course of doing  
28 business within the meaning of Health & Safety Code §25249.11. Kia Incorporated

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

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

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

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

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

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

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

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

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

27           100. Defendant MACY'S, INC. is a person in the course of doing business  
28 within the meaning of Health & Safety Code §25249.11. Macy's, Inc. manufactures, distributes

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

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

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

9           103. Defendant MARC JACOBS INTERNATIONAL, L.L.C. is a person in the  
10 course of doing business within the meaning of Health & Safety Code §25249.11. Marc Jacobs  
11 International, L.L.C. manufactures, distributes and/or sells the Products for sale or use in  
12 California.

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

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

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

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

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

28           109. Defendant MICHAEL KORS (USA), INC. is a person in the course of

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

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

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

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

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

16 114. Defendant THE NEW 5-7-9 AND BEYOND, INC. is a person in the  
17 course of doing business within the meaning of Health & Safety Code §25249.11. The New 5-7-  
18 9 and Beyond, Inc. manufactures, distributes and/or sells the Products for sale or use in  
19 California.

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

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

26 117. Defendant ONE-DISTRIBUTION COMPANY, LLC is a person in the  
27 course of doing business within the meaning of Health & Safety Code §25249.11. One-  
28 Distribution Company, LLC manufactures, distributes and/or sells the Products for sale or use in

1 California.

2           118. Defendant ORCHARD BRANDS CORPORATION is a person in the  
3 course of doing business within the meaning of Health & Safety Code §25249.11. Orchard  
4 Brands Corporation manufactures, distributes and/or sells the Products for sale or use in  
5 California.

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

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

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

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

20           123. 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           124. Defendant PERRY ELLIS MENSWEAR LLC is a person in the course of  
24 doing business within the meaning of Health & Safety Code §25249.11. Perry Ellis Menswear  
25 LLC manufactures, distributes and/or sells the Products for sale or use in California.

26           125. Defendant PHILLIPS-VAN HEUSEN CORPORATION is a person in the  
27 course of doing business within the meaning of Health & Safety Code §25249.11. Phillips-Van  
28 Heusen Corporation manufactures, distributes and/or sells the Products for sale or use in



1 California.

2           126. Defendant POLO RALPH LAUREN CORPORATION is a person in the  
3 course of doing business within the meaning of Health & Safety Code §25249.11. Polo Ralph  
4 Lauren Corporation manufactures, distributes and/or sells the Products for sale or use in  
5 California.

6           127. Defendant PUMA NORTH AMERICA, INC. is a person in the course of  
7 doing business within the meaning of Health & Safety Code §25249.11. Puma North America,  
8 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

19           131. Defendant RALPH LAUREN FOOTWEAR CORP. is a person in the  
20 course of doing business within the meaning of Health & Safety Code §25249.11. Ralph Lauren  
21 Footwear Corp. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

28           134. Defendant ROSS STORES, INC. is a person in the course of doing

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

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

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

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

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

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

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

21 141. Defendant SEYCHELLES IMPORTS LLC is a person in the course of  
22 doing business within the meaning of Health & Safety Code §25249.11. Seychelles Imports LLC  
23 manufactures, distributes and/or sells the Products for sale or use in California.

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

27 143. Defendant SHOE MAGNATE, INC. is a person in the course of doing  
28 business within the meaning of Health & Safety Code §25249.11. Shoe Magnate, Inc.

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

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

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

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

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

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

17           149. Defendant THE STRIDE RITE CORPORATION is a person in the course  
18 of doing business within the meaning of Health & Safety Code §25249.11. The Stride Rite  
19 Corporation manufactures, distributes and/or sells the Products for sale or use in California.

20           150. Defendant STUART WEITZMAN HOLDINGS, LLC is a person in the  
21 course of doing business within the meaning of Health & Safety Code §25249.11. Stuart  
22 Weitzman Holdings, LLC manufactures, distributes and/or sells the Products for sale or use in  
23 California.

24           151. Defendant SUPREME INTERNATIONAL LLC is a person in the course  
25 of doing business within the meaning of Health & Safety Code §25249.11. Supreme  
26 International LLC manufactures, distributes and/or sells the Products for sale or use in California.

27           152. Defendant THE TALBOTS, INC. is a person in the course of doing  
28 business within the meaning of Health & Safety Code §25249.11. The Talbots, Inc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17           167. Defendant VICTORIA'S SECRET DIRECT BRAND MANAGEMENT,  
18 LLC is a person in the course of doing business within the meaning of Health & Safety Code  
19 §25249.11. Victoria's Secret Direct Brand Management, LLC manufactures, distributes and/or  
20 sells the Products for sale or use in California.

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

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

27           170. Defendant VOLCOM RETAIL, INC. is a person in the course of doing  
28 business within the meaning of Health & Safety Code §25249.11. Volcom Retail, Inc.

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

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

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

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

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

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

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

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

23           178. DOES 251 through 500 are each a person in the course of doing business  
24 within the meaning of Health & Safety Code §25249.11. DOES 251 through 500 manufacture,  
25 distribute and/or sell the Products for sale or use in California. DOES 251 through 500 have  
26 workplaces in California, and are therefore liable for both consumer and occupational exposures  
27 under Proposition 65.

28           179. The defendants identified in paragraphs 5 through 176 and DOES 1

1 through 500 are collectively referred to herein as “Defendants.”

2 **JURISDICTION AND VENUE**

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

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

13 182. Venue is proper in the Alameda Superior Court because one or more of the  
14 violations arise in the County of Alameda.

15 **BACKGROUND FACTS**

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

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

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

27 185. On February 27, 1987, the State of California officially listed lead as a  
28 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive

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

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

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

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

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



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

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

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

22           192. Defendants' Products contain sufficient quantities of Lead such that  
23 individuals, including pregnant women and children, who wear, touch and/or handle the Products  
24 are exposed to Lead through the average use of the Products. Consumer exposures to Lead occur  
25 through ingestion via hand-to-mouth contact after consumers touch and/or handle the Products  
26 and dermal absorption directly through the skin when consumers wear, touch and/or handle the  
27 Products. Occupational exposures to Lead occur by dermal absorption directly through the skin  
28 when workers manufacture, assemble, display, sell, store, assist consumers trying on, or

1 otherwise touch or handle the Products. Occupational exposures also occur through hand-to-  
2 mouth contact after workers touch and/or handle the Products.

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

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

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

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

23 This notice alleges the violation of Proposition 65 with respect to  
24 occupational exposures governed by the California State Plan for  
25 Occupational Safety and Health. The State Plan incorporates the  
26 provisions of Proposition 65, as approved by Federal OSHA on  
27 June 6, 1997. This approval specifically placed certain conditions  
28 with regard to occupational exposures on Proposition 65, including  
that it does not apply to the conduct of manufacturers occurring  
outside the State of California. The approval also provides that an  
employer may use the means of compliance in the general hazard

1 communication requirements to comply with Proposition 65. It  
2 also requires that supplemental enforcement is subject to the  
3 supervision of the California Occupational Safety and Health  
4 Administration. Accordingly, any settlement, civil complaint, or  
5 substantive court orders in this matter must be submitted to the  
6 Attorney General.

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

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

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

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

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

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

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

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

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

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

19 **FIRST CAUSE OF ACTION**  
20 **(Violations of the Health & Safety Code §25249.6 – Consumer Exposures)**  
21 **(Against All Defendants)**

22 205. CEH realleges and incorporates by reference as if specifically set forth  
23 herein Paragraphs 1 through 204, inclusive.

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

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

28 208. Defendants know that average use of the Products will expose users of the  
Products to Lead. Defendants intend that the Products be used in a manner that results in users

1 of the Products being exposed to Lead contained in the Products.

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

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

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

10 **SECOND CAUSE OF ACTION**

11 (Violations of the Health & Safety Code §25249.6 – Occupational Exposures)  
12 (Defendants Aldo Group Inc., Aldo U.S. Inc., Audigier Brand Management Group, LLC,  
13 Bebe Stores, Inc., Betsey Johnson LLC, B. J. Vines, Inc., Blossom Footwear, Inc., Brown  
14 Shoe Company, Inc., The Buckle, Inc., C. & J. Clark America, Inc., C. & J. Clark Retail,  
15 Inc., Camuto Consulting Inc., Cels Enterprises, Inc. dba Chinese Laundry, Charlotte  
16 Russe, Inc., Christian Audigier, Inc., Coach, Inc., Cole Haan, Cole Haan Company Store,  
17 C.R.A. Int'l Industrial Inc., Dolce Vita Footwear, Inc., The Donna Karan Company LLC,  
18 The Donna Karan Company Store LLC, Donna Karan International Inc., DSW Shoe  
19 Warehouse, Inc., DV Retail, Inc., Elegance Enterprise Corporation, Ellie Shoes, Inc.,  
20 E.M.S. Trading Inc. dba Michael Antonio Footwear Group, Fashion Avenue, Fashion  
21 Avenue, LLC, Forever 21 Retail, Inc., French Connection Group, Inc., Ghanimian  
22 Enterprises, Inc., Golden Delta Enterprises, Inc., Golden West Footwear Inc., G.O. Max  
23 International, Inc., Halloween Express, LLC, Hardy Way, LLC, Hot On Time LLC, JAG  
24 Footwear, Accessories and Retail Corporation, J.C. Penney Corporation, Inc., Jones  
25 Apparel Group, Inc., Juicy Couture, Inc., Kenneth Cole Productions, Inc., Kia  
26 Incorporated, Kmart Corporation, Legend Footwear, Inc., Leon Max, Inc., Liz Claiborne,  
27 Inc., Loehmann's, Inc., Macy's, Inc., Macy's Department Stores, Inc., Marc Jacobs  
28 International, L.L.C., Marshalls of CA, LLC, Marshalls of MA, Inc., Nervous Tattoo, Inc.,  
Nordstrom, Inc., One-Distribution Company, LLC, Polo Ralph Lauren Corporation,  
Radiant Footwear, Inc., Ralph Lauren Footwear Corp., Restricted Footwear, Inc., Ross  
Stores, Inc., rue21, Inc., Sears, Roebuck and Co., Seychelles Imports LLC, Shiekh LLC,  
Shoe Magnate, Inc., SMAC, Inc., Spot Footwear, Inc., Steven Madden Ltd., Steven  
Madden Retail, Inc., Tatiossian Bros., Inc., T.J. Maxx of CA, LLC, The TJX Companies,  
Inc., UFG America, Inc., VCJS LLC, Versace USA, Inc., Wal-Mart Stores, Inc., The Wet  
Seal, Inc., The Wet Seal Retail, Inc., Zumiez, Inc. and DOES 251 through 500)

211. CEH realleges and incorporates by reference as if specifically set forth

1 herein Paragraphs 1 through 210, inclusive.

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

4           213. Lead is a chemical listed by the State of California as known to cause  
5 cancer and birth defects or other reproductive harm.

6           214. Defendants Aldo Group Inc., Aldo U.S. Inc., Audigier Brand Management  
7 Group, LLC, Bebe Stores, Inc., Betsey Johnson LLC, B. J. Vines, Inc., Blossom Footwear, Inc.,  
8 Brown Shoe Company, Inc., The Buckle, Inc., C. & J. Clark America, Inc., C. & J. Clark Retail,  
9 Inc., Camuto Consulting Inc., Cels Enterprises, Inc. dba Chinese Laundry, Charlotte Russe, Inc.,  
10 Christian Audigier, Inc., Coach, Inc., Cole Haan, Cole Haan Company Store, C.R.A. Int'l  
11 Industrial Inc., Dolce Vita Footwear, Inc., The Donna Karan Company LLC, The Donna Karan  
12 Company Store LLC, Donna Karan International Inc., DSW Shoe Warehouse, Inc., DV Retail,  
13 Inc., Elegance Enterprise Corporation, Ellie Shoes, Inc., E.M.S. Trading Inc. dba Michael  
14 Antonio Footwear Group, Fashion Avenue, Fashion Avenue, LLC, Forever 21 Retail, Inc.,  
15 French Connection Group, Inc., Ghanimian Enterprises, Inc., Golden Delta Enterprises, Inc.,  
16 Golden West Footwear Inc., G.O. Max International, Inc., Halloween Express, LLC, Hardy Way,  
17 LLC, Hot On Time LLC, JAG Footwear, Accessories and Retail Corporation, J.C. Penney  
18 Corporation, Inc., Jones Apparel Group, Inc., Juicy Couture, Inc., Kenneth Cole Productions,  
19 Inc., Kia Incorporated, Kmart Corporation, Legend Footwear, Inc., Leon Max, Inc., Liz  
20 Claiborne, Inc., Loehmann's, Inc., Macy's, Inc., Macy's Department Stores, Inc., Marc Jacobs  
21 International, L.L.C., Marshalls of CA, LLC, Marshalls of MA, Inc., Nervous Tattoo, Inc.,  
22 Nordstrom, Inc., One-Distribution Company, LLC, Polo Ralph Lauren Corporation, Radiant  
23 Footwear, Inc., Ralph Lauren Footwear Corp., Restricted Footwear, Inc., Ross Stores, Inc., rue21,  
24 Inc., Sears, Roebuck and Co., Seychelles Imports LLC, Shiekh LLC, Shoe Magnate, Inc., SMAC,  
25 Inc., Spot Footwear, Inc., Steven Madden Ltd., Steven Madden Retail, Inc., Tatiossian Bros.,  
26 Inc., T.J. Maxx of CA, LLC, The TJX Companies, Inc., UFG America, Inc., VCJS LLC, Versace  
27 USA, Inc., Wal-Mart Stores, Inc., The Wet Seal, Inc., The Wet Seal Retail, Inc., Zumiez, Inc. and  
28 DOES 251 through 500 (collectively, the "Occupational Exposure Defendants") know that the

1 Products will expose workers in California to Lead. Occupational Exposure Defendants intend  
2 that the Products be touched or handled in a manner that results in workers in California being  
3 exposed to Lead contained in the Products.

4 215. Occupational Exposure Defendants have failed, and continue to fail, to  
5 provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of  
6 the Lead in the Products to workers in California that touch or handle the Products.

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

12 Wherefore, CEH prays for judgment against Occupational Exposure Defendants,  
13 as set forth hereafter.

14 **PRAYER FOR RELIEF**

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

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

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

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

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

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

Dated: November 3, 2010.

Respectfully submitted,  
LEXINGTON LAW GROUP

  
Eric S. Somers  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH