

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LEXINGTON LAW GROUP  
Eric S. Somers, State Bar No. 139050  
Howard Hirsch, State Bar No. 213209  
Lisa Burger, State Bar No. 239676  
1627 Irving Street  
San Francisco, CA 94122  
Telephone: (415) 759-4111  
Facsimile: (415) 759-4112

Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 20 2010**

CLERK OF THE SUPERIOR COURT  
By Molly Kautz

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
  
Plaintiff, )  
  
v. )  
  
LULU NYC LLC, *et al.*, and Defendant DOES 1 )  
through 500, inclusive, )  
  
Defendants. )  
  
\_\_\_\_\_)  
And Consolidated Cases. )  
\_\_\_\_\_)

Lead Case No. RG 09-459448  
  
[Consolidated with Case No. RG 10-494289; Case No. RG 10-494513; and Case No. RG 10-494517]  
  
**FIRST AMENDED COMPLAINT –  
CENTER FOR ENVIRONMENTAL  
HEALTH V. ASHLEY STEWART  
LTD.; CASE NO. RG 10-494289.**  
  
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 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' belts made with leather,  
10 vinyl or imitation leather materials (the "Products"). Consumers, including pregnant women, are  
11 exposed to Lead when they touch or handle the Products.

12 2. Under California's Proposition 65, Health and Safety Code §25249.5, *et*  
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
14 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without  
15 providing clear and reasonable warnings to individuals prior to their exposure. Defendants  
16 introduce Products contaminated with significant quantities of Lead into the California  
17 marketplace, exposing consumers of their Products, many of whom are pregnant women, to  
18 Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and  
20 other people who come into contact with the Products to Lead, Defendants provide no warnings  
21 whatsoever about the carcinogenic or reproductive hazards associated with these Lead exposures.  
22 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety  
23 Code §25249.6.

#### 24 **PARTIES**

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
26 non-profit corporation dedicated to protecting the public from environmental health hazards and  
27 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the  
28 State of California. CEH is a "person" within the meaning of Health & Safety Code

1 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &  
2 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy  
3 group that has prosecuted a large number of Proposition 65 cases in the public interest. These  
4 cases have resulted in significant public benefit, including the reformulation of thousands of  
5 products to remove toxic chemicals to make them safer. CEH also provides information to  
6 Californians about the health risks associated with exposure to hazardous substances, where  
7 manufacturers and other responsible parties fail to do so.

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

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

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

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

20           9. Defendant ALDO U.S. INC. is a person in the course of doing business  
21 within the meaning of Health & Safety Code §25249.11. Aldo U.S. Inc. manufactures,  
22 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 AMIEE LYNN INC. is a person in the course of doing business  
28 within the meaning of Health & Safety Code §25249.11. Amiee Lynn Inc. manufactures,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16          25. Defendant CLAIRE'S STORES, INC. is a person in the course of doing  
17 business within the meaning of Health & Safety Code §25249.11. Claire's Stores, Inc.  
18 manufactures, distributes and/or sells the Products for sale or use in 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 CORNERSTONE APPAREL, INC. is a person in the course of  
4 doing business within the meaning of Health & Safety Code §25249.11. Cornerstone Apparel,  
5 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

9 32. Defendant THE DONNA KARAN COMPANY LLC is a person in the  
10 course of doing business within the meaning of Health & Safety Code §25249.11. The Donna  
11 Karan Company LLC manufactures, distributes and/or sells the Products for sale or use in  
12 California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

27           64. Defendant THE NEW 5-7-9 AND BEYOND, INC. is a person in the  
28 course of doing business within the meaning of Health & Safety Code §25249.11. The New 5-7-

1 9 and Beyond, Inc. manufactures, distributes and/or sells the Products for sale or use in  
2 California.

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

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

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

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

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

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

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

26 72. Defendant RAY ENTERPRISES OF CHESAPEAKE WALK, INC. DBA  
27 HOBOT INTERNATIONAL is a person in the course of doing business within the meaning of  
28 Health & Safety Code §25249.11. Ray Enterprises of Chesapeake Walk, Inc. dba Hobo

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

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

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

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

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

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

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

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

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

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

1           82. Defendant STEVEN MADDEN LTD. is a person in the course of doing  
2 business within the meaning of Health & Safety Code §25249.11. Steve Madden Ltd.  
3 manufactures, distributes and/or sells the Products for sale or use in California.

4           83. Defendant STEVEN MADDEN RETAIL, INC. is a person in the course  
5 of doing business within the meaning of Health & Safety Code §25249.11. Steve Madden Retail,  
6 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

23          89. Defendant VICTORIA'S SECRET DIRECT BRAND MANAGEMENT,  
24 LLC is a person in the course of doing business within the meaning of Health & Safety Code  
25 §25249.11. Victoria's Secret Direct Brand Management, LLC manufactures, distributes and/or  
26 sells the Products for sale or use in California.

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

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

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

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

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

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

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

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

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

23           98. DOES 1 through 500 are each a person in the course of doing business  
24 within the meaning of Health & Safety Code §25249.11. DOES 1 through 500 manufacture,  
25 distribute and/or sell the Products for sale or use in California.

26           99. The true names of DOES 1 through 500 are unknown to CEH at this time.  
27 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

28           100. The defendants identified in paragraphs 5 through 97 and DOES 1 through

1 500 are collectively referred to herein as "Defendants."

2 **JURISDICTION AND VENUE**

3 101. 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.

7 102. 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.

13 103. 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**

16 104. 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).

19 105. 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. . .

27 106. 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           107. 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           108. 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 or used by their parents or caretakers. In addition, young children are exposed to Lead  
16 from the Products when they touch their hands to their mouths after their hands have touched or  
17 handled the Products.

18           109. 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           110. 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           111. 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           112. 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. Lead is also found in  
22 metallic components used on some of the Products.

23           113. Defendants' Products contain sufficient quantities of Lead such that  
24 consumers, including pregnant women and children, who touch and/or handle the Products are  
25 exposed to Lead through the average use of the Products. The route of exposure for the  
26 violations is direct ingestion when consumers place the Products in their mouths; ingestion via  
27 hand-to-mouth contact after consumers touch or handle the Products; and dermal absorption  
28 directly through the skin when consumers take on or off and/or otherwise touch or handle the



1 Products.

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

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

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

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

1 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's  
2 counsel and the facts, studies or other data reviewed by such persons.

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

7 119. Defendants both know and intend that individuals, including pregnant  
8 women and children, will touch and/or handle the Products, thus exposing them to Lead.

9 120. Under Proposition 65, an exposure is "knowing" where the party  
10 responsible for such exposure has:

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

14 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
16 §12201).

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

19 122. Nevertheless, Defendants continue to expose consumers, including  
20 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the  
21 carcinogenic and/or reproductive hazards of Lead.

22 123. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
23 prior to filing this complaint.

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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


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

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

Dated: May 28, 2010

Respectfully submitted,

LEXINGTON LAW GROUP



Eric S. Somers  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH