

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

SEP 08 2010

John A. Clarke, Executive Officer/Clerk
By D. Swain, Deputy
DOROTHY SWAIN

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

ACME ACCESSORIES, INC., a California corporation; (Additional Parties Attachment Form is Attached)

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the public interest

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

COPY

The name and address of the court is:
(El nombre y dirección de la corte es): **Stanley Mosk Courthouse
Superior Court of California for the County of Los Angeles
111 North Hill Street, Los Angeles, California 90012**

CASE NUMBER:
(Número del Caso):

BC445101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Reuben Yeroushalmi SBN193981, 9100 Wilshire Blvd, 610E, Beverly Hills, CA 90212; 310.623.1926

DATE: **SEP 08 2010**
(Fecha)

Clerk, by _____, Deputy
(Secretario) D.M. Swain (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

- 4. by personal delivery on (date):

[SEAL]

SHORT TITLE: Consumer Advocacy Group, Inc. v. Acme Accessories, Inc.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant
ACME ACCESSORIES CORP., a business entity unknown; and Does 1-20

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OF ORIGINAL FILED
Los Angeles Superior Court

SEP 08 2010

John A. Clarke, Executive Officer/Clerk
By Dorothy Swain, Deputy
DOROTHY SWAIN

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
3 **YEROUSHALMI & ASSOCIATES**
9100 Wilshire Boulevard, Suite 610E
4 Beverly Hills, California 90212
Telephone: 310.623.1926
5 Facsimile: 310.623.1930

6 Attorneys for Plaintiff,
7 Consumer Advocacy Group, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11
12 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

13
14 Plaintiff,

15 v.

16 ACME ACCESSORIES, INC., a California
17 corporation; ACME ACCESSORIES CORP.,
a business entity unknown; and DOES 1-20;

18
19 Defendants.

CASE NO. BC445101

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

20
21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as
22 follows:

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

COPY

THE PARTIES

- 1
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is a non-profit
3 corporation qualified to do business in the State of California. CAG is a person within
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
5 as a private attorney general, brings this action in the public interest as defined under
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant Acme Accessories, Inc. ("Acme Inc.") is a company incorporated in the State
8 of California.
- 9 3. Defendant Acme Accessories Corp. ("Acme Corp.") is a business entity, form unknown,
10 qualified to do business and doing business in the State of California at all relevant times
11 herein.
- 12 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,
13 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
14 complaint to allege their true names and capacities when ascertained. Plaintiff is
15 informed, believes, and thereon alleges that each fictitiously named defendant is
16 responsible in some manner for the occurrences herein alleged and the damages caused
17 thereby.
- 18 5. At all times mentioned herein, the term "Defendants" includes Acme Inc., Acme Corp.,
19 and Does 1-20.
- 20 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
21 times mentioned herein have conducted business within the State of California.
- 22 7. At all times relevant to this action, each of the Defendants, including Does 1-20, was an
23 agent, servant, or employee of each of the other Defendants. In conducting the activities
24 alleged in this Complaint, each of the Defendants was acting within the course and scope
25 of this agency, service, or employment, and was acting with the consent, permission, and
26 authorization of each of the other Defendants. All actions of each of the Defendants
27 alleged in this Complaint were ratified and approved by every other Defendant or their
28

1 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
2 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

- 3 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
4 Defendants was a person doing business within the meaning of Health and Safety Code
5 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
6 employees at all relevant times.

7 **JURISDICTION**

- 8 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
9 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
10 those given by statute to other trial courts. This Court has jurisdiction over this action
11 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
12 violations of Proposition 65 in any Court of competent jurisdiction.
- 13 10. This Court has jurisdiction over Defendants named herein because Defendants either
14 reside or are located in this State or are foreign corporations authorized to do business in
15 California, are registered with the California Secretary of State, or who do sufficient
16 business in California, have sufficient minimum contacts with California, or otherwise
17 intentionally avail themselves of the markets within California through their manufacture,
18 distribution, promotion, marketing, or sale of their products within California to render
19 the exercise of jurisdiction by the California courts permissible under traditional notions
20 of fair play and substantial justice.
- 21 11. Venue is proper in the County of Los Angeles because one or more of the instances of
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
23 because Defendants conducted, and continue to conduct, business in the County of Los
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

- 26 12. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

7 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
8 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
9 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
10 chemicals and chemical families. Proposition 65 imposes warning requirements and
11 other controls that apply to Proposition 65-listed chemicals.

12 14. All businesses with ten (10) or more employees that operate or sell products in California
13 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
14 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
15 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
16 reasonable" warnings before exposing a person, knowingly and intentionally, to a
17 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

18 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
20 "Threaten to violate" means "to create a condition in which there is a substantial
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 16. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing
25 products of exposing, knowingly and intentionally, persons in California to the
26 Proposition 65-listed chemicals of such products without first providing clear and
27 reasonable warnings of such to the exposed persons prior to the time of exposure.

28 Plaintiff later discerned that Defendants engaged in such practice.

1 17. On October 1, 1992, the Governor of California added Lead and Lead compounds to the
2 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).
3 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
4 after addition of Lead and lead compounds to the list of chemicals known to the State to
5 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
6 requirements and discharge prohibitions.

7 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals
8 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).
9 Lead is known to the State to cause developmental, female, and male reproductive
10 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
11 months after addition of Lead to the list of chemicals known to the State to cause
12 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements
13 and discharge prohibitions.

14 **SATISFACTION OF PRIOR NOTICE**

15 19. On or about June 22, 2010, Plaintiff gave notice of alleged violations of Health and
16 Safety Code section 25249.6, concerning consumer products exposures, subject to a
17 private action to Acme Inc., identified in the notice as "Acme Accessories, Inc.," and
18 Acme Corp., identified in the notice as "Acme Accessories Corp.," and to the California
19 Attorney General, County District Attorneys, and City Attorneys for each city containing
20 a population of at least 750,000 people in whose jurisdictions the violations allegedly
21 occurred, concerning the products (1) "Justice" Girl's Brown Belt with multi-color polka-
22 dots (SKU No. 82063382), (2) "Justice" Girl's Black Belt with multi-color embroidered
23 hearts design (SKU No. 82063528), and (3) "Justice" Girl's Black Belt with sparkly
24 hearts design (SKU No. 82063421).

25 20. Before sending the notice of alleged violation, Plaintiff investigated the consumer
26 products involved, the likelihood that such products would cause users to suffer
27 significant exposures to lead, and the corporate structure of each of the Defendants.
28

1 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
2 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
3 Plaintiff who executed the certificate had consulted with at least one person with relevant
4 and appropriate expertise who reviewed data regarding the exposures to Lead,
5 respectively, which are the subject Proposition 65-listed chemicals of this action. Based
6 on that information, the attorney for Plaintiff who executed the Certificate of Merit
7 believed there was a reasonable and meritorious case for this private action. The attorney
8 for Plaintiff attached to the Certificate of Merit served on the Attorney General the
9 confidential factual information sufficient to establish the basis of the Certificate of
10 Merit.

11 22. Plaintiff's notice of alleged violations also included a Certificate of Service and a
12 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
13 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

14 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
15 gave notice of the alleged violations to Acme Inc., Acme Corp, and the public
16 prosecutors referenced in Paragraph 19.

17 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
18 any applicable district attorney or city attorney has commenced and is diligently
19 prosecuting an action against the Defendants.

20
21 **FIRST CAUSE OF ACTION**

22 **(By Consumer Advocacy Group, Inc. and against Acme Inc., Acme Corp., and Does 1-20**
23 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**
24 **1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

25 **"Justice" Girl's Brown Belt with multi-color polka-dots (SKU No. 82063382)**

26 25. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
27 paragraphs 1 through 24 of this complaint as though fully set forth herein.

28 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
distributor, promoter, or retailer of "Justice" Girl's Brown Belt with multi-color polka-

1 dots (SKU No. 82063382) (hereinafter "Belt 1"), a consumer product designed as a
2 clothing accessory.

3 27. Plaintiff is informed, believes, and thereon alleges that Belt 1 contains Lead.

4 28. Defendants knew or should have known that Lead has been identified by the State of
5 California as a chemical known to cause cancer and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of Lead in Belt 1 within Plaintiff's notice of alleged violations further
8 discussed above at Paragraph 19.

9 29. Plaintiff's allegations regarding Belt 1 concern "[c]onsumer products exposure[s]," which
10 "is an exposure that results from a person's acquisition, purchase, storage, consumption,
11 or other reasonably foreseeable use of a consumer good, or any exposure that results from
12 receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b). Belt 1 is a consumer
13 product, and, as mentioned herein, exposures to Lead took place as a result of such
14 normal and foreseeable consumption and use.

15 30. Plaintiff's allegations regarding Belt 1 also concern "[o]ccupational exposure[s]," which
16 are exposures "to any employees in his or her employer's workplace." *Cal. Code Reg.*
17 tit. 27, § 25602(f). As mentioned herein, employees were exposed to Lead in their
18 employer's workplace as a result of handling Belt 1, in conjunction with packaging,
19 shipping, distributing and/or selling Belt 1, among other activities, without having first
20 been given clear and reasonable warnings that such handling would cause exposures to
21 Lead.

22 31. Plaintiff is informed, believes, and thereon alleges that between March 23, 2007 and the
23 present, each of the Defendants knowingly and intentionally exposed their employees and
24 California consumers and users of Belt 1, which Defendants manufactured, distributed, or
25 sold as mentioned above, to Lead, without first providing any type of clear and
26 reasonable warning of such to the exposed persons before the time of exposure.

27 Defendants have distributed and sold Belt 1 in California. Defendants know and intend
28

1 that California consumers will use and consume Belt 1 thereby exposing them to Lead.
2 Defendants thereby violated Proposition 65.

3 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.

4 Persons sustain exposures by handling Belt 1 without wearing gloves or by touching bare
5 skin or mucous membranes with gloves after handling Belt 1, as well as hand to mouth
6 contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Belt 1 into their
7 mouths), hand to mucous membrane, or breathing in particulate matter released or
8 emanating from Belt 1 during foreseeable use, or as to Defendants' employees, in the
9 course of their employment handling, distributing, and selling Belt 1.

10 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
11 Proposition 65 as to Belt 1 have been ongoing and continuous to the date of the signing
12 of this complaint, as Defendants engaged and continue to engage in conduct which
13 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
14 promotion, and sale of Belt 1, so that a separate and distinct violation of Proposition 65
15 occurred each and every time a person was exposed to Lead by Belt 1 as mentioned
16 herein.

17 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
18 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
19 violations alleged herein will continue to occur into the future.

20 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to Lead from Belt 1, pursuant to Health and
22 Safety Code section 25249.7(b).

23 36. In the absence of equitable relief, the general public and Defendants' employees will
24 continue to be involuntarily exposed to Lead that is contained in Belt 1, creating a
25 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
26 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
27 remedy at law.

1 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 **SECOND CAUSE OF ACTION**

4 **(By Consumer Advocacy Group, Inc. and against Acme Inc., Acme Corp., and Does 1-20**
5 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**
6 **1986 (Health & Safety Code, §§ 25249.5, et seq.))**

7 **“Justice” Girl’s Black Belt with multi-color embroidered hearts design (SKU No.**
8 **82063528)**

9 38. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
10 paragraphs 1 through 37 of this complaint as though fully set forth herein.

11 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of “Justice” Girl’s Black Belt with multi-color
13 embroidered hearts design (SKU No. 82063528) (hereinafter “Belt 2”), a consumer
14 product designed as a clothing accessory.

15 40. Plaintiff is informed, believes, and thereon alleges that Belt 2 contains Lead.

16 41. Defendants knew or should have known that Lead has been identified by the State of
17 California as a chemical known to cause cancer and reproductive toxicity and therefore
18 was subject to Proposition 65 warning requirements. Defendants were also informed of
19 the presence of Lead in Belt 2 within Plaintiff’s notice of alleged violations further
20 discussed above at Paragraph 19.

21 42. Plaintiff’s allegations regarding Belt 2 concern “[c]onsumer products exposure[s],” which
22 “is an exposure that results from a person’s acquisition, purchase, storage, consumption,
23 or other reasonably foreseeable use of a consumer good, or any exposure that results from
24 receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. Belt 2 is a consumer
25 product, and, as mentioned herein, exposures to Lead took place as a result of such
26 normal and foreseeable consumption and use.

27 43. Plaintiff’s allegations regarding Belt 2 also concern “[o]ccupational exposure[s],” which
28 are exposures “to any employees in his or her employer’s workplace.” *Cal. Code Reg.*

1 tit. 27, § 25602(f). As mentioned herein, employees were exposed to Lead in their
2 employer's workplace as a result of handling Belt 2, in conjunction with packaging,
3 shipping, distributing and/or selling Belt 2, among other activities, without having first
4 been given clear and reasonable warnings that such handling would cause exposures to
5 Lead.

6 44. Plaintiff is informed, believes, and thereon alleges that between March 23, 2007 and the
7 present, each of the Defendants knowingly and intentionally exposed their employees and
8 California consumers and users of Belt 2, which Defendants manufactured, distributed, or
9 sold as mentioned above, to Lead, without first providing any type of clear and
10 reasonable warning of such to the exposed persons before the time of exposure.
11 Defendants have distributed and sold Belt 2 in California. Defendants know and intend
12 that California consumers will use and consume Belt 2 thereby exposing them to Lead.
13 Defendants thereby violated Proposition 65.

14 45. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by handling Belt 2 without wearing gloves or by touching bare
16 skin or mucous membranes with gloves after handling Belt 2, as well as hand to mouth
17 contact (e.g., by inserting surfaces, such as hands, that have contacted Belt 2 into their
18 mouths), hand to mucous membrane, or breathing in particulate matter released or
19 emanating from Belt 2 during foreseeable use, or as to Defendants' employees, in the
20 course of their employment handling, distributing, and selling Belt 2.

21 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
22 Proposition 65 as to Belt 2 have been ongoing and continuous to the date of the signing
23 of this complaint, as Defendants engaged and continue to engage in conduct which
24 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
25 promotion, and sale of Belt 2, so that a separate and distinct violation of Proposition 65
26 occurred each and every time a person was exposed to Lead by Belt 2 as mentioned
27 herein.

1 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to Lead from Belt 2, pursuant to Health and
6 Safety Code section 25249.7(b).

7 49. In the absence of equitable relief, the general public and Defendants' employees will
8 continue to be involuntarily exposed to Lead that is contained in Belt 2, creating a
9 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
10 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
11 remedy at law.

12 50. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
13 filing this Complaint.

14 **THIRD CAUSE OF ACTION**

15 **(By Consumer Advocacy Group, Inc. and against Acme Inc., Acme Corp., and Does 1-20**
16 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**
17 **1986 (Health & Safety Code, §§ 25249.5, et seq.))**

18 **“Justice” Girl’s Black Belt with sparkly hearts design (SKU No. 82063421)**

19 51. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
20 paragraphs 1 through 50 of this complaint as though fully set forth herein.

21 52. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of “Justice” Girl’s Black Belt with sparkly hearts design
23 (SKU No. 82063421) (hereinafter “Belt 3”), a consumer product designed as a clothing
24 accessory.

25 53. Plaintiff is informed, believes, and thereon alleges that Belt 3 contains Lead.

26 54. Defendants knew or should have known that Lead has been identified by the State of
27 California as a chemical known to cause cancer and reproductive toxicity and therefore
28 was subject to Proposition 65 warning requirements. Defendants were also informed of

1 the presence of Lead in Belt 3 within Plaintiff's notice of alleged violations further
2 discussed above at Paragraph 19.

3 55. Plaintiff's allegations regarding Belt 3 concern "[c]onsumer products exposure[s]," which
4 "is an exposure that results from a person's acquisition, purchase, storage, consumption,
5 or other reasonably foreseeable use of a consumer good, or any exposure that results from
6 receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b). Belt 3 is a consumer
7 product, and, as mentioned herein, exposures to Lead took place as a result of such
8 normal and foreseeable consumption and use.

9 56. Plaintiff's allegations regarding Belt 3 also concern "[o]ccupational exposure[s]," which
10 are exposures "to any employees in his or her employer's workplace." *Cal. Code Reg.*
11 tit. 27, § 25602(f). As mentioned herein, employees were exposed to Lead in their
12 employer's workplace as a result of handling Belt 3, in conjunction with packaging,
13 shipping, distributing and/or selling Belt 3, among other activities, without having first
14 been given clear and reasonable warnings that such handling would cause exposures to
15 Lead.

16 57. Plaintiff is informed, believes, and thereon alleges that between March 23, 2007 and the
17 present, each of the Defendants knowingly and intentionally exposed their employees and
18 California consumers and users of Belt 3, which Defendants manufactured, distributed, or
19 sold as mentioned above, to Lead, without first providing any type of clear and
20 reasonable warning of such to the exposed persons before the time of exposure.

21 Defendants have distributed and sold Belt 3 in California. Defendants know and intend
22 that California consumers will use and consume Belt 3 thereby exposing them to Lead.
23 Defendants thereby violated Proposition 65.

24 58. The principal routes of exposure are through dermal contact, ingestion and inhalation.
25 Persons sustain exposures by handling Belt 3 without wearing gloves or by touching bare
26 skin or mucous membranes with gloves after handling Belt 3, as well as hand to mouth
27 contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Belt 3 into their
28 mouths), hand to mucous membrane, or breathing in particulate matter released or

1 emanating from Belt 3 during foreseeable use, or as to Defendants' employees, in the
2 course of their employment handling, distributing, and selling Belt 3.

3 59. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to Belt 3 have been ongoing and continuous to the date of the signing
5 of this complaint, as Defendants engaged and continue to engage in conduct which
6 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
7 promotion, and sale of Belt 3, so that a separate and distinct violation of Proposition 65
8 occurred each and every time a person was exposed to Lead by Belt 3 as mentioned
9 herein.

10 60. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
12 violations alleged herein will continue to occur into the future.

13 61. Based on the allegations herein, Defendants are liable for civil penalties of up to
14 \$2,500.00 per day per individual exposure to Lead from Belt 3, pursuant to Health and
15 Safety Code section 25249.7(b).

16 62. In the absence of equitable relief, the general public and Defendants' employees will
17 continue to be involuntarily exposed to Lead that is contained in Belt 3, creating a
18 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
19 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
20 remedy at law.

21 63. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
22 filing this Complaint.

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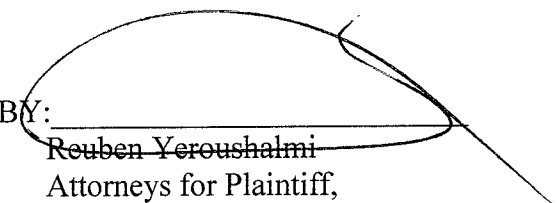
PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65-compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: September 7, 2010

YEROUSHALMI & ASSOCIATES

BY: 
Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.