

1 LEXINGTON LAW GROUP
Eric S. Somers, State Bar No. 139050
2 Howard Hirsch, State Bar No. 213209
Lisa Burger, State Bar No. 239676
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

NOV 03 2010

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,) Lead Case No. RG 09-459448
a non-profit corporation,)
12)
Plaintiff,) [Consolidated with Case No. RG 10-
13) 494289; Case No. RG 10-494513; and Case
v.) No. RG 10-494517]
14)
LULU NYC LLC, *et al.*, and Defendant DOES 1) **SECOND AMENDED COMPLAINT –**
through 500, inclusive,) **CENTER FOR ENVIRONMENTAL**
15) **HEALTH V. ASHLEY STEWART**
Defendants.) **LTD.; CASE NO. RG 10-494289**
16)
Health & Safety Code §25249.6, *et seq.*
17)
(Other)
18)
And Consolidated Cases.)
19)

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' 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 80'S PURPLE, INC. is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. 80's Purple, Inc. manufactures,
10 distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

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

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

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

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

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

14 16. Defendant ANA TRADING CO. is a person in the course of doing
15 business within the meaning of Health & Safety Code §25249.11. Ana Trading Co.
16 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

1 California.

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

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

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

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

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

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

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

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

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

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

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

7 32. 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 33. 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 34. 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 35. Defendant COLDWATER CREEK, INC. is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. Coldwater Creek, Inc.
18 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

28 39. Defendant CORNERSTONE APPAREL, INC. is a person in the course of

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

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

6 41. 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 42. Defendant DOLCE & GABBANA USA INC. is a person in the course of
10 doing business within the meaning of Health & Safety Code §25249.11. Dolce & Gabbana USA
11 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

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

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

7 50. Defendant FANTASIA ACCESSORIES, LTD. is a person in the course of
8 doing business within the meaning of Health & Safety Code §25249.11. Fantasia Accessories,
9 Ltd. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

25 56. Defendant GEORGIU DESIGN STUDIOS, INC. is a person in the
26 course of doing business within the meaning of Health & Safety Code §25249.11. Georgiou
27 Design Studios, Inc. manufactures, distributes and/or sells the Products for sale or use in
28 California.

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

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

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

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

13 61. Defendant H.A. SHELDON CANADA LTD. is a person in the course of
14 doing business within the meaning of Health & Safety Code §25249.11. H.A. Sheldon Canada
15 Ltd. manufactures, distributes and/or sells the Products for sale or use in California.

16 62. 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 63. Defendant THE HOLLYWOOD COMPANY, LLC is a person in the
20 course of doing business within the meaning of Health & Safety Code §25249.11. The
21 Hollywood Company, LLC manufactures, distributes and/or sells the Products for sale or use in
22 California.

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

26 65. Defendant JAG FOOTWEAR, ACCESSORIES AND RETAIL
27 CORPORATION is a person in the course of doing business within the meaning of Health &
28 Safety Code §25249.11. JAG Footwear, Accessories and Retail Corporation manufactures,

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

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

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

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

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

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

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

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

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

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

1 California.

2 75. Defendant LANDS' END, INC. DBA LANDS' END DIRECT
3 MERCHANTS, INC. is a person in the course of doing business within the meaning of Health &
4 Safety Code §25249.11. Lands' End, Inc. dba Lands' End Direct Merchants, Inc. manufactures,
5 distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

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

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

28 83. Defendant MARC JACOBS INTERNATIONAL, L.L.C. is a person in the

1 course of doing business within the meaning of Health & Safety Code §25249.11. Marc Jacobs
2 International, L.L.C. manufactures, distributes and/or sells the Products for sale or use in
3 California.

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

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

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

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

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

21 89. Defendant NEW LINE TRIM, INC. is a person in the course of doing
22 business within the meaning of Health & Safety Code §25249.11. New Line Trim, Inc.
23 manufactures, distributes and/or sells the Products for sale or use in California.

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

27 91. Defendant NORDSTROM, INC. is a person in the course of doing
28 business within the meaning of Health & Safety Code §25249.11. Nordstrom, Inc. manufactures,

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

2 92. Defendant PACIFIC SUNWEAR OF CALIFORNIA, INC. is a person in
3 the course of doing business within the meaning of Health & Safety Code §25249.11. Pacific
4 Sunwear of California, Inc. manufactures, distributes and/or sells the Products for sale or use in
5 California.

6 93. Defendant PACIFIC SUNWEAR STORES CORP. is a person in the
7 course of doing business within the meaning of Health & Safety Code §25249.11. Pacific
8 Sunwear Stores Corp. manufactures, distributes and/or sells the Products for sale or use in
9 California.

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

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

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

20 97. Defendant POLO RALPH LAUREN CORPORATION is a person in the
21 course of doing business within the meaning of Health & Safety Code §25249.11. Polo Ralph
22 Lauren Corporation manufactures, distributes and/or sells the Products for sale or use in
23 California.

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

27 99. Defendant RAINBOW APPAREL DISTRIBUTION CENTER CORP. is a
28 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

1 Rainbow Apparel Distribution Center Corp. manufactures, distributes and/or sells the Products
2 for sale or use in California.

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

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

9 102. Defendant RAY ENTERPRISES OF CHESAPEAKE WALK, INC. DBA
10 HOBO INTERNATIONAL is a person in the course of doing business within the meaning of
11 Health & Safety Code §25249.11. Ray Enterprises of Chesapeake Walk, Inc. dba Hobo
12 International manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

28 108. Defendant SEARS, ROEBUCK AND CO. is a person in the course of

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

3 109. Defendant SHA SHA COLLECTION, INC. DBA MODE PLUS is a
4 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
5 Sha Sha Collection, Inc. dba Mode Plus manufactures, distributes and/or sells the Products for
6 sale or use in California.

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

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

13 112. Defendant SPIEGEL CATALOG HOLDINGS CORPORATION is a
14 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
15 Spiegel Catalog Holdings Corporation manufactures, distributes and/or sells the Products for sale
16 or use in California.

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

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

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

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

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

4 118. Defendant TANDY BRANDS ACCESSORIES, INC. is a person in the
5 course of doing business within the meaning of Health & Safety Code §25249.11. Tandy Brands
6 Accessories, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

7 119. Defendant TANDY BRANDS ACCESSORIES HANDBAGS, INC. is a
8 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
9 Tandy Brands Accessories Handbags, Inc. manufactures, distributes and/or sells the Products for
10 sale or use in California.

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

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

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

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

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

26 125. 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.

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

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

8 128. Defendant VICTORIA'S SECRET DIRECT BRAND MANAGEMENT,
9 LLC is a person in the course of doing business within the meaning of Health & Safety Code
10 §25249.11. Victoria's Secret Direct Brand Management, LLC manufactures, distributes and/or
11 sells the Products for sale or use in California.

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

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

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

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

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

27 134. Defendant WORLDWIDE DREAMS LLC is a person in the course of
28 doing business within the meaning of Health & Safety Code §25249.11. Worldwide Dreams

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

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

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

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

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

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

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

19 141. The defendants identified in paragraphs 5 through 138 and DOES 1
20 through 500 are collectively referred to herein as "Defendants."

21 **JURISDICTION AND VENUE**

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

26 143. This Court has jurisdiction over Defendants because each is a business
27 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
28 intentionally avails itself of the California market through the sale, marketing or use of the

1 Products in California and/or by having such other contacts with California so as to render the
2 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
3 play and substantial justice.

4 144. Venue is proper in the Alameda Superior Court because one or more of the
5 violations arise in the County of Alameda.

6 **BACKGROUND FACTS**

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

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

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

19 147. On February 27, 1987, the State of California officially listed lead as a
20 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
21 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
22 the developing fetus, “female reproductive toxicity,” which means harm to the female
23 reproductive system, and “male reproductive toxicity,” which means harm to the male
24 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,
25 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
26 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
27 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

28 148. On October 1, 1992, the State of California officially listed lead and lead
compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were

1 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
2 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
3 §27001(c); Health & Safety Code §25249.10(b).

4 149. Some of the Products are designed for and marketed to children. Young
5 children are also exposed to Lead from the Products when they touch or play with Products that
6 are owned or used by their parents or caretakers. In addition, young children are exposed to Lead
7 from the Products when they touch their hands to their mouths after their hands have touched or
8 handled the Products.

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

19 151. There is no safe level of exposure to Lead and even minute amounts of
20 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,
21 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
22 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
23 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
24 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
25 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
26 children into adulthood and found a sevenfold increase in the risk for developing a reading
27 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
28 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low

1 Doses of Lead in Childhood: An 11-Year Follow-up Report,” *New England Journal of Medicine*
2 322:83-88, 1990.

3 152. Lead exposures for pregnant women are also of particular concern in light
4 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.
5 Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
6 Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, “Reduced
7 Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental Health*
8 *Perspectives* 114:5, 2006.

9 153. Lead is found in the fabric and/or material from which many of the
10 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather
11 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in
12 the Products and in the chemicals used in the leather tanning process. Lead is also found in
13 metallic components used on some of the Products.

14 154. Defendants’ Products contain sufficient quantities of Lead such that
15 consumers, including pregnant women and children, who touch and/or handle the Products are
16 exposed to Lead through the average use of the Products. The route of exposure for the
17 violations is direct ingestion when consumers place the Products in their mouths; ingestion via
18 hand-to-mouth contact after consumers touch or handle the Products; and dermal absorption
19 directly through the skin when consumers take on or off and/or otherwise touch or handle the
20 Products.

21 155. No clear and reasonable warning is provided with the Products regarding
22 the carcinogenic or reproductive hazards of Lead.

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

27 157. More than sixty days prior to naming each Defendant in this lawsuit, CEH
28 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,

1 the District Attorneys of every county in California, the City Attorneys of every California city
2 with a population greater than 750,000 and to each of the named Defendants. In compliance with
3 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
4 information: (1) the name and address of each violator; (2) the statute violated; (3) the time
5 period during which violations occurred; (4) specific descriptions of the violations, including (a)
6 the routes of exposure to Lead from the Products, and (b) the specific type of products sold and
7 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
8 chemical that is the subject of the violations described in each Notice.

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

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

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

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

1 responsible for such exposure has:

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

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

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

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

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

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

20 **FIRST CAUSE OF ACTION**
21 **(Violations of the Health & Safety Code §25249.6)**

22 166. CEH realleges and incorporates by reference as if specifically set forth
23 herein Paragraphs 1 through 165, inclusive.

24 167. 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.

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

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

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

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

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

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

11 **PRAYER FOR RELIEF**

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

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

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

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

23 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
24 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