1 2 3 4 5 6	LEXINGTON LAW GROUP Eric S. Somers, State Bar No. 139050 Howard Hirsch, State Bar No. 213209 Lisa Burger, State Bar No. 239676 503 Divisadero Street San Francisco, CA 94117 Telephone: (415) 913-7800 Facsimile: (415) 759-4112 esomers@lexlawgroup.com hhirsch@lexlawgroup.com lburger@lexlawgroup.com	FILED JUL 2 6 2011 KIM TURNER Court Executive Officer MARIN COUNTY SUPERIOR COURT By: R. Smith, Deputy	
7	Attorneys for Plaintiff CENTER FOR ENVIRONMENTAL HEALTH		
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10	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
11	COUNTY OF MARIN		
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13		Case No. CV1103702	
14	CENTER FOR ENVIRONMENTAL HEALTH,) a non-profit corporation,	Case No.	
15	Plaintiff,	COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES	
15 16	Plaintiff,) v.	COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES	
	v.)		
16	v. GOLD MEDAL PRODUCTS, INC.; HUDSON) INDUSTRIES, INC.; OVERSTOCK.COM,)	RELIEF AND CIVIL PENALTIES	
16 17	v. GOLD MEDAL PRODUCTS, INC.; HUDSON INDUSTRIES, INC.; OVERSTOCK.COM, INC.; and DOES 1 through 200, inclusive,	RELIEF AND CIVIL PENALTIES Health & Safety Code § 25249.6, et seq.	
16 17 18	v. GOLD MEDAL PRODUCTS, INC.; HUDSON) INDUSTRIES, INC.; OVERSTOCK.COM,)	RELIEF AND CIVIL PENALTIES Health & Safety Code § 25249.6, et seq.	
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COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Plaintiff Center for Environmental Health, in the public interest, based on 1 information and belief and investigation of counsel, except for information based on knowledge, 2 hereby makes the following allegations: 3 INTRODUCTION 4 This Complaint seeks to remedy Defendants' continuing failure to warn 1. 5 individuals in California that they are being exposed to lead and lead compounds (collectively, 6 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other 7 reproductive harm. Such exposures have occurred, and continue to occur, through the 8 manufacture, distribution, sale and use of Defendants' beanbag chairs (the "Products"). 9 Consumers, including pregnant women and children, are exposed to Lead when they use, touch 10 11 or handle the Products. Under California's Proposition 65, Health & Safety Code § 25249.5, et 2. 12 seq., it is unlawful for businesses to knowingly and intentionally expose individuals in California 13 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without 14 providing clear and reasonable warnings to individuals prior to their exposure. Defendants 15 introduce Products contaminated with significant quantities of Lead into the California 16 marketplace, exposing consumers of their Products, many of whom are pregnant women and 17 children, to Lead. 18 Despite the fact that Defendants expose pregnant women, children and 19 3. other consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or 20 reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the 21 warning provision of Proposition 65. Health & Safety Code § 25249.6. 22 PARTIES 23 Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a 4. 24 non-profit corporation dedicated to protecting the public from environmental health hazards and 25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the 26 State of California. CEH is a "person" within the meaning of Health & Safety Code 27 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & 28

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Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy 1 group that has prosecuted a large number of Proposition 65 cases in the public interest. These 2 cases have resulted in significant public benefit, including the reformulation of thousands of 3 products to remove toxic chemicals and to make them safer. CEH also provides information to 4 Californians about the health risks associated with exposure to hazardous substances, where 5 manufacturers and other responsible parties fail to do so. 6 Defendant GOLD MEDAL PRODUCTS, INC. is a person in the course of 7 5. doing business within the meaning of Health & Safety Code § 25249.11. Gold Medal Products, 8 Inc. manufactures, distributes and/or sells the Products for sale and use in California. 9 Defendant HUDSON INDUSTRIES, INC. is a person in the course of 10 6. doing business within the meaning of Health & Safety Code § 25249.11. HUDSON 11 INDUSTRIES, INC. manufactures, distributes and/or sells the Products for sale and use in 12 California. 13 7. Defendant OVERSTOCK.COM, INC. is a person in the course of doing 14 business within the meaning of Health & Safety Code § 25249.11. Overstock.com, Inc. 15 manufactures, distributes and/or sells the Products for sale and use in California. 16 DOES 1 through 200 are each a person in the course of doing business 8. 17 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture, 18 19 distribute and/or sell the Products for sale or use in California. The true names of DOES 1 through 200 are unknown to CEH at this time. 9. 20 When their identities are ascertained, the Complaint shall be amended to reflect their true names. 21 The defendants identified in paragraphs 5 through 7 and DOES 1 through 10. 22 200 are collectively referred to herein as "Defendants." 23 JURISDICTION AND VENUE 24 The Court has jurisdiction over this action pursuant to Health & Safety 11. 25 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant 26 to California Constitution Article VI, Section 10, because this case is a cause not given by statute 27 to other trial courts. 28

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This Court has jurisdiction over Defendants because each is a business 1 12. entity that does sufficient business, has sufficient minimum contacts in California or otherwise 2 intentionally avails itself of the California market through the sale, marketing or use of the 3 Products in California and/or by having such other contacts with California so as to render the 4 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair 5 play and substantial justice. 6 Venue is proper in the Marin County Superior Court because one or more of 7 13. 8 the violations arise in the County of Marin. **BACKGROUND FACTS** 9 The People of the State of California have declared by initiative under 14. 10 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth 11 12 defects, or other reproductive harm." Proposition 65, § 1(b). To effectuate this goal, Proposition 65 prohibits exposing people to 13 15. chemicals listed by the State of California as known to cause cancer, birth defects or other 14 reproductive harm above certain levels without a "clear and reasonable warning" unless the 15 business responsible for the exposure can prove that it fits within a statutory exemption. Health 16 & Safety Code § 25249.6 states, in pertinent part: 17 No person in the course of doing business shall knowingly and 18 intentionally expose any individual to a chemical known to the 19 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . 20 On February 27, 1987, the State of California officially listed lead as a 16. 21 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive 22 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to 23 the developing fetus, "female reproductive toxicity," which means harm to the female 24 reproductive system, and "male reproductive toxicity," which means harm to the male 25 reproductive system. 27 California Code of Regulations ("C.C.R.") § 27001(c). On February 27, 26 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead 27 became subject to the clear and reasonable warning requirement regarding reproductive toxicants 28

1 under Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

17. 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
listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
§ 27001(c); Health & Safety Code § 25249.10(b).

Young children are especially susceptible to the toxic effects of Lead. 7 18. Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from 8 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children 9 absorb and retain more Lead in proportion to their weight than do adults. Young children also 10 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal 11 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even 12 small doses received in childhood, over time, can cause adverse health impacts, including but not 13 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such 14 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby 15 increasing the level of Lead in the blood and increasing the risk of harm to the fetus. 16

There is no safe level of exposure to Lead and even minute amounts of 19. 17 Lead exposure have been proven harmful to children and adults. Studies have repeatedly 18 concluded that concentrations of Lead in children's blood previously deemed acceptable can 19 have adverse health effects. See, e.g., Canfield, R.L., et al., "Intellectual Impairment in Children 20 with Blood Lead Concentrations below 10 ug per Deciliter," New England Journal of Medicine 21 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the 22 smallest detectable amount of blood Lead levels in children can mean the difference between an 23 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead 24 Toxicity in U.S. Children and Adolescents," Neurodevelopmental Disabilities II Platform, 2000. 25 Lead exposures for pregnant women are also of particular concern in light 20. 26 of evidence that even short term lead exposures in utero may have long-term harmful effects. 27 Hu, H., et al., "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental 28

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Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*, "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health Perspectives* 114:5, 2006.

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Defendants' Products contain sufficient quantities of Lead such that 4 21. consumers, including pregnant women and children, who touch or handle the Products are 5 exposed to Lead through the average use of the Products. The routes of exposure for the 6 violations are direct ingestion when consumers place items that have been in contact with the 7 Products in their mouths; dermal absorption directly through the skin when consumers touch, use 8 or handle the Products; and ingestion via hand-to-mouth contact after consumers touch, use or 9 handle the Products or items that have been in contact with the Products. These exposures occur 10 in homes, workplaces and everywhere else throughout California where these Products are 11 touched, used or handled. 12

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

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

More than sixty days prior to naming each Defendant in this lawsuit, CEH 24. 19 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, 20 the District Attorneys of every county in California, the City Attorneys of every California city 21 with a population greater than 750,000 and to each of the named Defendants. In compliance with 22 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the 23 following information: (1) the name and address of each violator; (2) the statute violated; (3) the 24 time period during which violations occurred; (4) specific descriptions of the violations, 25 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of 26 Products sold and used in violation of Proposition 65; and (5) the name of the specific 27 Proposition 65-listed chemical that is the subject of the violations described in each Notice. 28

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1	25. CEH also sent a Certificate of Merit for each Notice to the California		
2	Attorney General, the District Attorneys of every county in California, the City Attorneys of		
3	every California city with a population greater than 750,000 and to each of the named		
4	Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each		
5	Certificate certified that CEH's counsel: (1) has consulted with one or more persons with		
6	relevant and appropriate experience or expertise who reviewed facts, studies or other data		
7	regarding the exposures to Lead alleged in each Notice; and (2) based on the information		
8	obtained through such consultations, believes that there is a reasonable and meritorious case for a		
9	citizen enforcement action based on the facts alleged in each Notice. In compliance with Health		
10	& Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney		
11	General included factual information – provided on a confidential basis – sufficient to establish		
12	the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel		
13	and the facts, studies or other data reviewed by such persons.		
14	26. None of the public prosecutors with the authority to prosecute violations		
15	of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against		
16	Defendants under Health & Safety Code § 25249.5, et seq., based on the claims asserted in each		
17	of CEH's Notices.		
18	27. Defendants both know and intend that individuals, including pregnant		
19	women and children, will use, touch or handle the Products, thus exposing them to Lead.		
20	28. Under Proposition 65, an exposure is "knowing" where the party		
21	responsible for such exposure has:		
22	knowledge of the fact that $a[n] \dots$ exposure to a chemical listed		
23	pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that the exposure is unlawful is required.		
24	27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. See, e.g., Final		
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26	Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,		
27	§ 12201).		
28	29. Defendants have been informed of the Lead in their Products by the 60-		
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1	Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.		
2	30. Defendants also have constructive knowledge that their Products contain		
3	Lead due to the widespread media coverage concerning the problem of Lead in consumer		
4	products in general and in products made of vinyl in particular.		
5	31. As companies that manufacture, import, distribute and/or sell the Products		
6	for use in the California marketplace, Defendants know or should know that the Products contain		
7	Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to		
8	consumers who use the Products are a natural and foreseeable consequence of Defendants'		
9	placing the Products into the stream of commerce.		
10	32. Nevertheless, Defendants continue to expose consumers, including		
11	pregnant women and children, to Lead without prior clear and reasonable warnings regarding the		
12	carcinogenic or reproductive hazards of Lead.		
13	33. CEH has engaged in good-faith efforts to resolve the claims alleged herein		
14	prior to filing this Complaint.		
15	34. 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	35. CEH realleges and incorporates by reference as if specifically set forth		
23	herein Paragraphs 1 through 34, inclusive.		
24	36. 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	37. Lead is a chemical listed by the State of California as known to cause		
27	cancer, birth defects and other reproductive harm.		
28	38. Defendants know that average use of the Products will expose users of the		
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1	Products to Lead. Defendants intend that the Products be used in a manner that results in		
2	exposures to Lead from the Products.		
3	39. Defendants have failed, and continue to fail, to provide clear and		
4	reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of		
5	the Products.		
6	40. 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		
14	civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation		
15	of 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		
25	5. That the Court grant such other and further relief as may be just and		
26	proper.		
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1	Dated: July 26, 2011	Respectfully submitted,
2		LEXINGTON LAW GROUP
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5		Howard Hirsch Attorneys for Plaintiff
6		CENTER FOR ENVIRONMENTAL HEALTH
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