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CENTER FOR ENVIRONMENTAL HEALTH  
8

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 CENTER FOR ENVIRONMENTAL HEALTH, ) Lead Case No. RG 09-459448  
13 a non-profit corporation, )  
14 Plaintiff, ) [Consolidated with Case No. RG 10-  
15 v. ) 494289; Case No. RG 10-494513; and Case  
16 LULU NYC LLC, *et al.*, and Defendant DOES 1 ) No. RG 10-494517]  
17 through 500, inclusive, ) **THIRD AMENDED COMPLAINT –**  
18 Defendants. ) **CENTER FOR ENVIRONMENTAL**  
19 ) **HEALTH V. ZAPPOS.COM, INC.;**  
20 And Consolidated Cases. ) **CASE NO. RG 10-494513**  
21 ) Health & Safety Code §25249.6, *et seq.*  
22 ) (Other)  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 26 2011

CLERK OF THE SUPERIOR COURT  
BY *[Signature]*

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 Third Amended Complaint seeks to remedy Defendants' continuing  
6 failure to warn individuals in California that they are being exposed to lead and lead compounds  
7 (collectively, "Lead"), chemicals known to the State of California to cause cancer and birth  
8 defects and other reproductive harm. Such exposures have occurred, and continue to occur,  
9 through the manufacture, distribution, sale and/or use of Defendants' footwear made with leather,  
10 vinyl or imitation leather materials (the "Products"). Consumers and workers in California,  
11 including pregnant women, are exposed to Lead when they wear, touch or handle the Products.

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

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

#### 24 PARTIES

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

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

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

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

14           7. Defendant DIESEL SPA is a person in the course of doing business within  
15 the meaning of Health & Safety Code §25249.11. Diesel SpA manufactures, distributes and/or  
16 sells the Products for sale or use in California.

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

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

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

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

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

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

7           14. Defendant HOT TOPIC MERCHANDISING, INC. is a person in the  
8 course of doing business within the meaning of Health & Safety Code §25249.11. Hot Topic  
9 Merchandising, Inc. manufactures, distributes and/or sells the Products for sale or use in  
10 California.

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

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

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

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

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

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

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

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

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

10           24. Defendant THE NEIMAN MARCUS GROUP, INC. is a person in the  
11 course of doing business within the meaning of Health & Safety Code §25249.11. The Neiman  
12 Marcus Group, Inc. manufactures, distributes and/or sells the Products for sale or use in  
13 California.

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

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

20           27. Defendant OAKLEY SALES CORP. is a person in the course of doing  
21 business within the meaning of Health & Safety Code §25249.11. Oakley Sales Corp.  
22 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

1           30. Defendant PHILIP SIMON DEVELOPMENT USA, INC. is a person in  
2 the course of doing business within the meaning of Health & Safety Code §25249.11. Philip  
3 Simon Development USA, Inc. manufactures, distributes and/or sells the Products for sale or use  
4 in California.

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

8           32. Defendant SELECT DISTRIBUTION is a person in the course of doing  
9 business within the meaning of Health & Safety Code §25249.11. Select Distribution  
10 manufactures, distributes and/or sells the Products for sale or use in California.

11           33. Defendant SHIEKH ELIJAH DBA SHIEKH ELLAHI is a person in the  
12 course of doing business within the meaning of Health & Safety Code §25249.11 Shiekh Elijah  
13 dba Shiekh Ellahi manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

26           38. Defendant T & C FOOTWEAR CORP. is a person in the course of doing  
27 business within the meaning of Health & Safety Code §25249.11. T & C Footwear Corp.  
28 manufactures, distributes and/or sells the Products for sale or use in California.

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

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

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

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

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

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

19           45. Defendant VIDA SHOES INTERNATIONAL, INC. is a person in the  
20 course of doing business within the meaning of Health & Safety Code §25249.11. Vida Shoes  
21 International, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

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

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

28           48. DOES 1 through 250 are each a person in the course of doing business

1 within the meaning of Health & Safety Code §25249.11. DOES 1 through 250 manufacture,  
2 distribute and/or sell the Products for sale or use in California.

3 49. DOES 251 through 500 are each a person in the course of doing business  
4 within the meaning of Health & Safety Code §25249.11. DOES 251 through 500 manufacture,  
5 distribute and/or sell the Products for sale or use in California. DOES 251 through 500 have  
6 workplaces in California, and are therefore liable for both consumer and occupational exposures  
7 under Proposition 65.

8 50. The defendants identified in paragraphs 5 through 47 and DOES 1 through  
9 500 are collectively referred to herein as "Defendants."

### 10 JURISDICTION AND VENUE

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

15 52. This Court has jurisdiction over Defendants because each is a business  
16 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
17 intentionally avails itself of the California market through the sale, marketing or use of the  
18 Products in California and/or by having such other contacts with California so as to render the  
19 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
20 play and substantial justice.

21 53. Venue is proper in the Alameda Superior Court because one or more of the  
22 violations arise in the County of Alameda.

### 23 BACKGROUND FACTS

24 54. The People of the State of California have declared by initiative under  
25 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth  
26 defects, or other reproductive harm." Proposition 65, §1(b).

27 55. To effectuate this goal, Proposition 65 prohibits exposing people to  
28 chemicals listed by the State of California as known to cause cancer, birth defects or other



1 reproductive harm without a “clear and reasonable warning” unless the business responsible for  
2 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6  
3 states, in pertinent part:

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

8           56.     On February 27, 1987, the State of California officially listed lead as a  
9           chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
10          toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
11          the developing fetus, “female reproductive toxicity,” which means harm to the female  
12          reproductive system, and “male reproductive toxicity,” which means harm to the male  
13          reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,  
14          1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead  
15          became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
16          under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

17          57.     On October 1, 1992, the State of California officially listed lead and lead  
18          compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
19          listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
20          and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
21          §27001(c); Health & Safety Code §25249.10(b).

22          58.     Some of the Products are designed for and marketed to children. Young  
23          children are also exposed to Lead from the Products when they touch or play with Products that  
24          are owned, touched or handled by their parents or caretakers. In addition, young children are  
25          exposed to Lead from the Products when they touch their hands to their mouths after their hands  
26          have touched or handled the Products.

27          59.     Young children are especially susceptible to the toxic effects of Lead.  
28          Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from  
29          Lead exposure generally occur in children at lower blood Lead levels than in adults. Children

1 absorb and retain more Lead in proportion to their weight than do adults. Young children also  
2 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal  
3 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even  
4 small doses received in childhood, over time, can cause adverse health impacts, including but not  
5 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such  
6 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby  
7 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

8           60. There is no safe level of exposure to Lead and even minute amounts of  
9 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,  
10 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the  
11 effect of childhood Lead exposure declared that even the smallest detectable amount of blood  
12 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,  
13 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and  
14 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed  
15 children into adulthood and found a sevenfold increase in the risk for developing a reading  
16 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,  
17 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low  
18 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*  
19 322:83-88, 1990.

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

26           62. Lead is found in the fabric and/or material from which many of the  
27 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather  
28 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in

1 the Products and in the chemicals used in the leather tanning process.

2           63. Defendants' Products contain sufficient quantities of Lead such that  
3 individuals, including pregnant women and children, who wear, touch and/or handle the Products  
4 are exposed to Lead through the average use of the Products. Consumer exposures to Lead occur  
5 through ingestion via hand-to-mouth contact after consumers touch and/or handle the Products  
6 and dermal absorption directly through the skin when consumers wear, touch and/or handle the  
7 Products. Occupational exposures to Lead occur by dermal absorption directly through the skin  
8 when workers manufacture, assemble, display, sell, store, assist consumers trying on, or  
9 otherwise touch or handle the Products. Occupational exposures also occur through hand-to-  
10 mouth contact after workers touch and/or handle the Products.

11           64. No clear and reasonable warning is provided with the Products regarding  
12 the carcinogenic or reproductive hazards of Lead.

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

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

27           67. In compliance with 8 C.C.R. §338(b), to the extent occupational exposures  
28 are alleged, each of CEH's 60-Day Notices to the California Attorney General, the District

1 Attorneys of every county in California, the City Attorneys of every California city with a  
2 population greater than 750,000 and to the named Defendants included the following statement:

3 This notice alleges the violation of Proposition 65 with respect to  
4 occupational exposures governed by the California State Plan for  
5 Occupational Safety and Health. The State Plan incorporates the  
6 provisions of Proposition 65, as approved by Federal OSHA on  
7 June 6, 1997. This approval specifically placed certain conditions  
8 with regard to occupational exposures on Proposition 65, including  
9 that it does not apply to the conduct of manufacturers occurring  
10 outside the State of California. The approval also provides that an  
11 employer may use the means of compliance in the general hazard  
12 communication requirements to comply with Proposition 65. It  
13 also requires that supplemental enforcement is subject to the  
14 supervision of the California Occupational Safety and Health  
15 Administration. Accordingly, any settlement, civil complaint, or  
16 substantive court orders in this matter must be submitted to the  
17 Attorney General.

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

69. None of the public prosecutors with the authority to prosecute violations  
of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against

1 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in the  
2 Notice.

3           70. Defendants both know and intend that consumers and workers in  
4 California, including pregnant women, will wear, touch and/or handle the Products, thus  
5 exposing them to Lead.

6           71. Under Proposition 65, an exposure is “knowing” where the party  
7 responsible for such exposure has:

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

11 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
12 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
13 §12201).

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

16           73. Nevertheless, Defendants continue to expose consumers and workers in  
17 California, including pregnant women, to Lead without prior clear and reasonable warnings  
18 regarding the carcinogenic and/or reproductive hazards of Lead.

19           74. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
20 prior to filing this Complaint.

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

1 **FIRST CAUSE OF ACTION**

2 **(Violations of the Health & Safety Code §25249.6 – Consumer Exposures)**  
3 **(Against All Defendants)**

4 76. CEH realleges and incorporates by reference as if specifically set forth  
5 herein Paragraphs 1 through 75, inclusive.

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

8 78. Lead is a chemical listed by the State of California as known to cause  
9 cancer and birth defects or other reproductive harm.

10 79. Defendants know that average use of the Products will expose users of the  
11 Products to Lead. Defendants intend that the Products be used in a manner that results in users  
12 of the Products being exposed to Lead contained in the Products.

13 80. Defendants have failed, and continue to fail, to provide prior clear and  
14 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead contained in  
15 the Products to users of the Products.

16 81. By committing the acts alleged above, Defendants have at all times  
17 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
18 individuals to Lead without first giving clear and reasonable warnings to such individuals  
19 regarding the carcinogenicity and reproductive toxicity of Lead.

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

21 **SECOND CAUSE OF ACTION**

22 **(Violations of the Health & Safety Code §25249.6 – Occupational Exposures)**  
23 **(Defendants Blossom Footwear, Inc., Earth, Inc., Ghanimian Enterprises, Inc., Golden**  
24 **Delta Enterprises, Inc., Golden West Footwear Inc., Hot Topic Merchandising, Inc., Hot**  
25 **Topic, Inc., Kia Incorporated, Leon Max, Inc., Marshalls of CA, LLC, Marshalls of MA,**  
26 **Inc., Philip Simon Development USA, Inc., Restricted Footwear, Inc., Select Distribution,**  
27 **Shoe Magnate, Inc., SMAC, Inc., Spot Footwear, Inc., T and B Boots, Inc., T & C Footwear**  
28 **Corp., T.J. Maxx of CA, LLC, Tatiossian Bros., Inc., The TJX Companies, Inc., UFG**  
**America, Inc., Versace USA, Inc., Vida Shoes International, Inc., and DOES 251**  
**through 500)**

76. CEH realleges and incorporates by reference as if specifically set forth  
herein Paragraphs 1 through 81, inclusive.

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

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

5           85.    Defendants Blossom Footwear, Inc., Earth, Inc., Ghanimian Enterprises,  
6 Inc., Golden Delta Enterprises, Inc., Golden West Footwear Inc., Hot Topic Merchandising, Inc.,  
7 Hot Topic, Inc., Kia Incorporated, Leon Max, Inc., Marshalls of CA, LLC, Marshalls of MA,  
8 Inc., Philip Simon Development USA, Inc., Restricted Footwear, Inc., Select Distribution, Shoe  
9 Magnate, Inc., SMAC, Inc., Spot Footwear, Inc., T and B Boots, Inc., T & C Footwear Corp.,  
10 T.J. Maxx of CA, LLC, Tatiossian Bros., Inc., The TJX Companies, Inc., UFG America, Inc.,  
11 Versace USA, Inc., Vida Shoes International, Inc., and DOES 251 through 500 (collectively, the  
12 “Occupational Exposure Defendants”) know that the Products will expose workers in California  
13 to Lead. Occupational Exposure Defendants intend that the Products be touched or handled in a  
14 manner that results in workers in California being exposed to Lead contained in the Products.

15           86.    Occupational Exposure Defendants have failed, and continue to fail, to  
16 provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of  
17 the Lead in the Products to workers in California that touch or handle the Products.

18           87.    By committing the acts alleged above, Occupational Exposure Defendants  
19 have at all times relevant to this Complaint violated Proposition 65 by knowingly and  
20 intentionally exposing workers in California to Lead in their workplaces without first giving clear  
21 and reasonable warnings to such individuals regarding the carcinogenicity and reproductive  
22 toxicity of Lead.

23           Wherefore, CEH prays for judgment against Occupational Exposure Defendants,  
24 as set forth hereafter.

25   **PRAYER FOR RELIEF**

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

27           1.    That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil  
28 penalties against each Defendant in the amount of \$2,500 per day for each violation of

1 Proposition 65 according to proof;

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

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

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

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

14  
15 Dated: July 26, 2010

Respectfully submitted,

16 LEXINGTON LAW GROUP

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19 \_\_\_\_\_  
20 Howard Hirsch  
21 Attorneys for Plaintiff  
22 CENTER FOR ENVIRONMENTAL HEALTH  
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