

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 Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and/or use of Defendants' belts made with leather, vinyl or
10 imitation leather materials (the "Products"). Consumers, including pregnant women, are exposed
11 to Lead when they use, 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 AQUARIUS LTD. is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. Aquarius Ltd. manufactures, distributes
10 and/or sells the Products for sale or use in California.

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

14 7. Defendant BURLINGTON COAT FACTORY WAREHOUSE
15 CORPORATION is a person in the course of doing business within the meaning of Health &
16 Safety Code §25249.11. Burlington Coat Factory Warehouse Corporation manufactures,
17 distributes and/or sells the Products for sale or use in California.

18 8. Defendant GUARANTEE MARKETING AND SALES, INC. is a person
19 in the course of doing business within the meaning of Health & Safety Code §25249.11.
20 Guarantee Marketing and Sales, Inc. manufactures, distributes and/or sells the Products for sale
21 or use in California.

22 9. Defendant LOVE CULTURE LLC is a person in the course of doing
23 business within the meaning of Health & Safety Code §25249.11. Love Culture LLC
24 manufactures, distributes and/or sells the Products for sale or use in California.

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

28 11. Defendant M. LONDON, INC. is a person in the course of doing business

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

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

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

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

11 15. The defendants identified in paragraphs 5 through 12 and DOES 1 through
12 500 are collectively referred to herein as "Defendants."

13 JURISDICTION AND VENUE

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

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

24 18. Venue is proper in the Alameda Superior Court because one or more of the
25 violations arise in the County of Alameda.

26 BACKGROUND FACTS

27 19. The People of the State of California have declared by initiative under
28 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth

1 defects, or other reproductive harm.” Proposition 65, §1(b).

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

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

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

19 22. On October 1, 1992, the State of California officially listed lead and lead
20 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
21 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
22 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
23 §27001(c); Health & Safety Code §25249.10(b).

24 23. Some of the Products are designed for and marketed to children. Young
25 children are also exposed to Lead from the Products when they touch or play with Products that
26 are owned or used by their parents or caretakers. In addition, young children are exposed to Lead
27 from the Products when they eat food that is stored or carried in the Products or touch or play
28 with non-food items that are stored or carried in the Products. Additional childhood exposures to

1 Lead occur when children touch their hands to their mouths after their hands have touched the
2 Products or items stored or carried in the Products.

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

13 25. There is no safe level of exposure to Lead and even minute amounts of
14 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,
15 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
16 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
17 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
18 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
19 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
20 children into adulthood and found a sevenfold increase in the risk for developing a reading
21 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
22 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low
23 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*
24 322:83-88, 1990.

25 26. Lead exposures for pregnant women are also of particular concern in light
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 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced

1 Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental Health*
2 *Perspectives* 114:5, 2006.

3 27. Lead is found in the fabric and/or material from which many of the
4 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather
5 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in
6 the Products and in the chemicals used in the leather tanning process. Lead is also found in the
7 metallic components such as zippers and zipper pulls used on some of the Products.

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

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

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

1 31. 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 the named Defendants. In
4 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each of the
5 Certificates 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 of the Notices; 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 of the Notices. In compliance with
10 Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the Certificates served on the
11 Attorney General included factual information – provided on a confidential basis – sufficient to
12 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's
13 counsel and the facts, studies or other data reviewed by such persons.

14 32. 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 the
17 Notice.

18 33. Defendants both know and intend that individuals, including pregnant
19 women and children, will use, touch and/or handle the Products, thus exposing them to Lead.

20 34. Under Proposition 65, an exposure is “knowing” where the party
21 responsible for such exposure has:

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

25 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
26 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
27 §12201).

28 35. No clear and reasonable warning is provided with the Products regarding

1 the carcinogenic or reproductive hazards of Lead.

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

4 37. Nevertheless, Defendants continue to expose consumers, including
5 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the
6 carcinogenic and/or reproductive hazards of Lead.

7 38. CEH has engaged in good-faith efforts to resolve the claims alleged herein
8 prior to filing this Complaint.

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

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

16 40. CEH realleges and incorporates by reference as if specifically set forth
17 herein Paragraphs 1 through 39, inclusive.

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

20 42. Lead is a chemical listed by the State of California as known to cause
21 cancer and birth defects or other reproductive harm.

22 43. Defendants know that average use of the Products will expose users of the
23 Products to Lead. Defendants intend that the Products be used in a manner that results in users
24 of the Products being exposed to Lead contained in the Products.

25 44. Defendants have failed, and continue to fail, to provide prior clear and
26 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
27 the Products.

28 45. By committing the acts alleged above, Defendants have at all times

1 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
2 individuals to Lead without first giving clear and reasonable warnings to such individuals
3 regarding the carcinogenicity and reproductive toxicity of Lead.

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

5 **PRAYER FOR RELIEF**

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

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

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

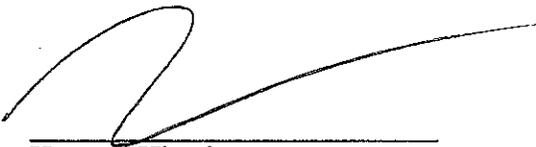
14 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
15 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
16 Products sold by Defendants, as CEH shall specify in further application to the Court;

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

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

21
22 Dated: November 9, 2011

Respectfully submitted,
LEXINGTON LAW GROUP

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27 Howard Hirsch
Attorneys for Plaintiff
28 CENTER FOR ENVIRONMENTAL HEALTH