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**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAR 14 2013

John A. Clarke, Executive Officer/Clerk  
By Amber Hayes, Deputy

5  
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF LOS ANGELES – CENTRAL DISTRICT  
8

9 ALISA SCHOCHET,

Unlimited Jurisdiction

10 Plaintiff,

CASE NO.

BC502990

11  
12 vs.

COMPLAINT FOR CIVIL  
PENALTY AND INJUNCTIVE  
RELIEF

14 SODASTREAM USA, INC.; STAPLES,  
INC.; and DOES 1 to 50, Inclusive

(Health and Safety Code § 25249.5  
et seq. and Business and Professions  
Code § 17200)

16 Defendants.

TOXIC TORT/ENVIRONMENTAL

BY FAX

17  
18  
19 Plaintiff, Alisa Schochet, a citizen of the State of California, by and through Daniel  
20 Greenbaum, her counsel of record, hereby alleges:  
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22  
23 **I. PRELIMINARY STATEMENT**

24 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure  
25 to lead, which is a chemical known to the State of California to cause birth defects, or other  
26 reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and  
27 Safety Code section 25249.6, also known as “Proposition 65,” businesses must provide persons with  
28 a “clear and reasonable warning” before exposing individuals to chemicals known to the state to  
cause cancer or reproductive harm.

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## II. PARTIES

2. Plaintiff is a citizen of the State of California, by and through her counsel of record, Daniel N. Greenbaum. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by “any person in the public interest.” Business and Professions Code sections 17200 *et seq.* provide that actions to enforce that statute may be brought in a private “Attorney General” action.

3. Defendant SODASTREAM USA, INC. (SODASTREAM) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of beverage products under the brand name SodaStream and other brand names, that contain lead, for sale within the State of California, without first giving clear and reasonable warning.

4. Defendant STAPLES, INC. (STAPLES) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the distribution, or sale of beverage products under the brand name Staples and other brand names, that contain lead, for sale within the State of California, without first giving clear and reasonable warning.

## III. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.

6. This Court has jurisdiction over SODASTREAM and STAPLES, because they are business entities that do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market, through the sale, marketing, and use of its products in California, to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

7. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles County because Defendant’s products are sold and consumed in this county.

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2 **IV. STATUTORY BACKGROUND**

3 **A. Proposition 65**

4 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
5 passed as "Proposition 65" by a vote of the people in November of 1986.

6 9. The warning requirement of Proposition 65 is contained in Health and Safety Code  
7 section 25249.6, which provides:

8 No person in the course of doing business shall knowingly and intentionally  
9 expose any individual to a chemical known to the state to cause cancer or  
10 reproductive toxicity without first giving clear and reasonable warning to such  
11 individual, except as provided in Section 25249.10.

12 10. An exposure to a chemical in a consumer product is one "which results from a  
13 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
14 consumer good, or any exposure that results from receiving a consumer service." (Cal. Code Regs.,  
15 tit. 22, § 12601, subd. (b).)

16 11. Proposition 65 establishes a procedure by which the state is to develop a list of  
17 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §  
18 25249.8.) No warning need be given concerning a listed chemical until one year after the chemical  
19 first appears on the list. (*Id.*, § 25249.10, subd. (b).)

20 12. Any person "violating or threatening to violate" the statute may be enjoined in any  
21 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To "threaten to violate" is defined  
22 to mean "to create a condition in which there is a substantial probability that a violation will occur."  
23 (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to \$2,500 per day  
24 for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

25 13. Actions to enforce the law "may be brought by the Attorney General in the name of  
26 the People of the State of California [or] by any district attorney [or] by any City Attorney of a City  
27 having a population in excess of 750,000 . . ." (*Id.*, § 25249.7, subd. (c).) Private parties are given  
28 authority to enforce Proposition 65 "in the public interest," but only if the private party first provides

1 written notice of a violation to the alleged violator, the Attorney General, and every District Attorney  
2 in whose jurisdiction the alleged violation occurs. If no public prosecutors commence enforcement  
3 within sixty days, then the private party may sue. (Health & Saf. Code, § 25249.7(d).) No such  
4 governmental action has been pursued against Defendants STAPLES AND SODASTREAM.

### 5 **B. The Unfair Competition Act**

6 14. California Business and Professions Code section 17200 provides that “unfair  
7 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section 17203  
8 of the Business and Professions Code provides that “(a)ny person performing or proposing to perform  
9 an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.”

10 15. Unlawful acts under the statute include any act that is unlawful that is conducted as  
11 part of business activity, and therefore include violations of Proposition 65.

12 16. Business and Professions Code section 17206, subdivision (a), provides that any  
13 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five  
14 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action  
15 brought in the name of the people of the State of California by the Attorney General or by any district  
16 attorney . . . [or] by any city attorney of a city . . . having a population in excess of 750,000.” Under  
17 section 17205, these penalties are “cumulative to each other and to the remedies or penalties available  
18 under all other laws of this state.”

### 19 **V. FACTS**

20 17. “Lead” was placed in the Governor's list of chemicals known to the State of California  
21 to cause reproductive toxicity on February 27, 1987. It is specifically identified under three  
22 subcategories: “developmental reproductive toxicity,” which means harm to the developing fetus,  
23 “female reproductive toxicity,” which means harm to the female reproductive system, and “male  
24 reproductive toxicity,” which means harm to the male reproductive system. (Cal. Code Regs., tit. 22,  
25 § 12000, subd. (c).)  
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1           18.     “Lead and lead compounds” were placed in the Governor's list of chemicals known to  
2 the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000, subd.  
3 (b).)

4           19.     SODATREAM is a manufacturer, distributor and marketer of products that create  
5 carbonated beverages for use by individuals in the home. Many of these machines are sold through  
6 STAPLES for use by citizens of the State of California.

7           20.     The process followed in manufacturing the SodaStream products for sale to the  
8 consuming public must be approved by SODASTREAM, including the carbonation cylinders used by  
9 these products for creating carbonated beverages for personal use by consumers.

10          21.     Individuals who purchase, handle or consume SodaStream beverages are exposed to  
11 lead chiefly through: (1) contact between the cylinders and the skin, (2) transfer of lead from the skin  
12 to the mouth, both by transfer of lead directly from the hand to mouth and by transfer of lead from the  
13 skin to objects that are put in the mouth, such as food, and (3) through absorption of lead through the  
14 skin. Such individuals are thus exposed to the lead that is present on and in SodaStream carbonation  
15 cylinders product in the course of the intended and reasonably foreseeable use of those bottles.

16          22.     At all times material to this complaint, Defendant SODASTREAM has had knowledge  
17 that the carbonation cylinders contain lead and that the liquid comes into contact with the lead in the  
18 cylinders.

19          23.     At all times material to this complaint, Defendants STAPLES and SODASTREAM  
20 have had knowledge that individuals within the State of California handle SodaStream carbonation  
21 cylinders that contain lead and consume the beverage created from those cylinders.

22          24.     At all times material to this complaint, Defendants knew that the SodaStream products  
23 were sold throughout the State of California in large numbers, and Defendants profited from such  
24 sales through, among other things, the sale of SodaStream soda makers whose products were sold in  
25 California.

26          25.     Notwithstanding this knowledge, Defendant SODASTREAM intentionally authorized  
27 and reauthorized the sale of SodaStream products that contained lead.

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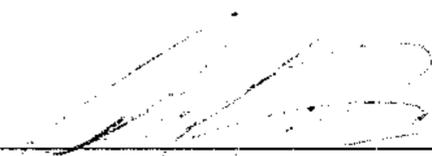
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that the Court:

1. Pursuant to the First and Second Causes of Action, grant civil penalties according to proof;
2. Pursuant to Health and Safety Code section 25249.7 and Business and Professions Code section 17203, enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to Listed Chemicals caused by the use of their products without providing clear and reasonable warnings, as Plaintiffs shall specify in further application to the court;
3. Enter such orders as “may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of” these unlawful acts, as provided in Business and Professions Code section 17203 and other applicable laws;
4. Award Plaintiffs their costs of suit, including attorneys fees;
5. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: March 13, 2013

  
By: DANIEL N. GREENBAUM  
Attorney for Plaintiff Alisa Schochet

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE (NON-CLASS ACTION)**

Case Number \_\_\_\_\_

**BC502990**

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3(c)). There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Daniel Buckley	1	534	Hon. Debre Katz Weintraub	47	507
Hon. Michael P. Linfield	10	631	Hon. Elizabeth Allen White	48	506
Hon. Barbara A. Meiers	12	636	Hon. Deirdre Hill	49	509
Hon. Terry A. Green	14	300	Hon. John L. Segal	50	508
Hon. Richard Fruin	15	307	Hon. Abraham Khan	51	511
Hon. Rita Miller	16	306	Hon. Susan Bryant-Deason	52	510
Hon. Richard E. Rico	17	309	Hon. Steven J. Kleifield	53	513
Hon. Kevin C. Brazile	20	310	Hon. Ernest M. Hiroshige	54	512
Hon. Robert L. Hess	24	314	Hon. Malcolm H. Mackey	55	515
Hon. Mary Ann Murphy	25	317	Hon. Michael Johnson	56	514
			Hon. Ralph W. Dau	57	517
Hon. Yvette M. Palazuelos	28	318	Hon. Rolf M. Treu	58	516
Hon. Barbara Scheper	30	400			
			Hon. Michael L. Stern	62	600
Hon. Mary H. Strobel	32	406	Hon. Mark Mooney	68	617
		409			
		408	Hon. Soussan G. Bruguera	71	729
"unassigned"	35	411	Hon. Ruth Ann Kwan	72	731
Hon. Gregory Alarcon	36	410	Hon. Teresa Sanchez-Gordon	74	735
			Hon. William F. Fahey	78	730
Hon. Maureen Duffy-Lewis	38	412	<b>Hon. Emilie H. Elias</b>	<b>324</b>	<b>CCW</b>
Hon. Michelle R. Rosenblatt	40	414	<b>Hon. Elihu M. Berle</b>	<b>323</b>	<b>CCW</b>
Hon. Ronald M. Sohigian	41	417	Other		
Hon. Holly E. Kendig	42	416			
Hon. Mel Red Recana	45	529			

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ **JOHN A. CLARKE**, Executive Officer/Clerk

By \_\_\_\_\_, Deputy Clerk

## **INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES**

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

### **APPLICATION**

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

### **PRIORITY OVER OTHER RULES**

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

### **CHALLENGE TO ASSIGNED JUDGE**

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

### **TIME STANDARDS**

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

### **FINAL STATUS CONFERENCE**

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

### **SANCTIONS**

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.