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CENTER FOR ENVIRONMENTAL HEALTH
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 CENTER FOR ENVIRONMENTAL HEALTH,)
15 a non-profit corporation,)

16 Plaintiff,)

17 v.)

18 A BABY INC.; AMAZON.COM, INC.;)
ANGELES CORPORATION; BABY DOLL)
19 BEDDING, INC.; BABY DOLL INFANTS)
WEAR CO., INC.; BABY MATTERS LLC;)
20 BED BATH & BEYOND, INC.; CARPENTER)
CO.; CHILDRENS FACTORY, INC.; DELTA)
21 ENTERPRISE CORP.; DEX PRODUCTS,)
INC.; FOUNDATIONS WORLDWIDE, INC.;)
22 HAYNEEDLE, INC.; KMART)
CORPORATION; LAKESHORE EQUIPMENT)
23 COMPANY; MUNCHKIN, INC.; PEERLESS)
PRODUCTS, INC.; TARGET)
24 CORPORATION; TOYS "R")
US-DELAWARE, INC.; VENTURE)
25 PRODUCTS LLC; WAYFAIR LLC; and DOES)
1 through 700, inclusive,)

26 Defendants.)
27
28

**ENDORSED
FILED
ALAMEDA COUNTY**
FEB 15 2013
CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

7G13667688
Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

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 tris(1,3-dichloro-2-propyl) phosphate
7 ("TDCPP"), a chemical known to the State of California to cause cancer. TDCPP is a toxic
8 chemical that is used to treat polyurethane foam, which is used as padding or cushioning in a
9 variety of products. This Complaint addresses exposures that have occurred, and continue to
10 occur, through the manufacture, distribution, sale, and/or use of three types of foam-containing
11 products: (i) foam-cushioned pads for infants and children to lie on, such as pads and mats used
12 for sleeping, resting, and/or changing diapers (collectively, "Reclining Pads"); (ii)
13 foam-cushioned mattress toppers (collectively, "Mattress Toppers"); and (iii) foam-cushioned
14 upholstered furniture, such as chairs, ottomans, and sofas (collectively, "Upholstered Furniture").
15 Reclining Pads, Mattress Toppers, and Upholstered Furniture are collectively referred to herein
16 as "Products." Individuals in California, including infants and children, are exposed to TDCPP
17 when they inhale TDCPP released from Products, and also when TDCPP from Products
18 accumulates in ambient particles that are subsequently touched by such individuals and brought
19 into contact with the mouth.

20 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*
21 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
22 to chemicals known to the State to cause cancer without providing clear and reasonable warnings
23 to individuals prior to their exposure. Defendants introduce Products contaminated with
24 significant quantities of TDCPP into the California marketplace, exposing consumers of their
25 Products, many of whom are infants and children, to TDCPP.

26 3. Despite the fact that Defendants expose infants, children, and other people
27 to TDCPP, Defendants provide no warnings whatsoever about the carcinogenic hazards
28 associated with these TDCPP exposures. Defendants' conduct thus violates the warning

1 provision of Proposition 65. Health & Safety Code § 25249.6.

2 **PARTIES**

3 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a
4 non-profit corporation dedicated to protecting the public from environmental health hazards and
5 toxic exposures. CEH is based in Oakland, California and is incorporated under the laws of the
6 State of California. CEH is a “person” within the meaning of Health & Safety Code §
7 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety
8 Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group
9 that has prosecuted a large number of Proposition 65 cases in the public interest. These cases
10 have resulted in significant public benefit, including the reformulation of thousands of products
11 to remove toxic chemicals to make them safer. CEH also provides information to Californians
12 about the health risks associated with exposure to hazardous substances, where manufacturers
13 and other responsible parties fail to do so.

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

17 6. Defendant AMAZON.COM, INC. is a person in the course of doing
18 business within the meaning of Health & Safety Code § 25249.11. Amazon.com, Inc.
19 manufactures, distributes, and/or sells Reclining Pads for sale or use in California.

20 7. Defendant ANGELES CORPORATION is a person in the course of doing
21 business within the meaning of Health & Safety Code § 25249.11. Angeles Corporation
22 manufactures, distributes, and/or sells Reclining Pads for sale or use in California.

23 8. Defendant BABY DOLL BEDDING, INC. is a person in the course of
24 doing business within the meaning of Health & Safety Code § 25249.11. Baby Doll Bedding,
25 Inc. manufactures, distributes, and/or sells Reclining Pads for sale or use in California.

26 9. Defendant BABY DOLL INFANTS WEAR CO., INC. is a person in the
27 course of doing business within the meaning of Health & Safety Code § 25249.11. Baby Doll
28 Infants Wear Co., Inc. manufactures, distributes, and/or sells Reclining Pads for sale or use in

1 California.

2 10. Defendant BABY MATTERS LLC is a person in the course of doing
3 business within the meaning of Health & Safety Code § 25249.11. Baby Matters LLC
4 manufactures, distributes, and/or sells Reclining Pads for sale or use in California.

5 11. Defendant BED BATH & BEYOND, INC. is a person in the course of
6 doing business within the meaning of Health & Safety Code § 25249.11. Bed Bath & Beyond,
7 Inc. manufactures, distributes, and/or sells Mattress Toppers and Upholstered Furniture for sale
8 or use in California.

9 12. Defendant CARPENTER CO. is a person in the course of doing business
10 within the meaning of Health & Safety Code § 25249.11. Carpenter Co. manufactures,
11 distributes, and/or sells Mattress Toppers for sale or use in California.

12 13. Defendant CHILDRENS FACTORY, INC. is a person in the course of
13 doing business within the meaning of Health & Safety Code § 25249.11. Childrens Factory, Inc.
14 manufactures, distributes, and/or sells Reclining Pads for sale or use in California.

15 14. Defendant DELTA ENTERPRISE CORP. is a person in the course of
16 doing business within the meaning of Health & Safety Code § 25249.11. Delta Enterprise Corp.
17 manufactures, distributes, and/or sells Reclining Pads and Upholstered Furniture for sale or use
18 in California.

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

22 16. Defendant FOUNDATIONS WORLDWIDE, INC. is a person in the
23 course of doing business within the meaning of Health & Safety Code § 25249.11. Foundations
24 Worldwide, Inc. manufactures, distributes, and/or sells Reclining Pads for sale or use in
25 California.

26 17. Defendant HAYNEEDLE, INC. is a person in the course of doing business
27 within the meaning of Health & Safety Code § 25249.11. Hayneedle, Inc. manufactures,
28 distributes, and/or sells Reclining Pads for sale or use in California.

1 18. Defendant KMART CORPORATION is a person in the course of doing
2 business within the meaning of Health & Safety Code § 25249.11. Kmart Corporation
3 manufactures, distributes, and/or sells Reclining Pads for sale or use in California.

4 19. Defendant LAKESHORE EQUIPMENT COMPANY is a person in the
5 course of doing business within the meaning of Health & Safety Code § 25249.11. Lakeshore
6 Equipment Company manufactures, distributes, and/or sells Reclining Pads for sale or use in
7 California.

8 20. Defendant MUNCHKIN, INC. is a person in the course of doing business
9 within the meaning of Health & Safety Code § 25249.11. Munchkin, Inc. manufactures,
10 distributes, and/or sells Reclining Pads for sale or use in California.

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

14 22. Defendant TARGET CORPORATION is a person in the course of doing
15 business within the meaning of Health & Safety Code § 25249.11. Target Corporation
16 manufactures, distributes, and/or sells Reclining Pads and Upholstered Furniture for sale or use
17 in California.

18 23. Defendant TOYS "R" US-DELAWARE, INC. is a person in the course of
19 doing business within the meaning of Health & Safety Code § 25249.11. Toys "R"
20 Us-Delaware, Inc. manufactures, distributes, and/or sells Reclining Pads for sale or use in
21 California.

22 24. Defendant VENTURE PRODUCTS LLC is a person in the course of
23 doing business within the meaning of Health & Safety Code § 25249.11. Venture Products LLC
24 manufactures, distributes, and/or sells Reclining Pads for sale or use in California.

25 25. Defendant WAYFAIR LLC is a person in the course of doing business
26 within the meaning of Health & Safety Code § 25249.11. Wayfair LLC manufactures,
27 distributes, and/or sells Reclining Pads for sale or use in California.

28 26. DOES 1 through 100 are each a person in the course of doing business

1 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture,
2 distribute, and/or sell Reclining Pads for sale or use in California. Defendants A BABY INC.;
3 AMAZON.COM, INC.; ANGELES CORPORATION; BABY DOLL BEDDING, INC.; BABY
4 DOLL INFANTS WEAR CO., INC.; BABY MATTERS LLC; CHILDRENS FACTORY, INC.;
5 DELTA ENTERPRISE CORP.; DEX PRODUCTS, INC.; FOUNDATIONS WORLDWIDE,
6 INC.; HAYNEEDLE, INC.; KMART CORPORATION; LAKESHORE EQUIPMENT
7 COMPANY; MUNCHKIN, INC.; PEERLESS PRODUCTS, INC.; TARGET CORPORATION;
8 TOYS “R” US-DELAWARE, INC.; VENTURE PRODUCTS LLC; WAYFAIR LLC; and
9 DOES 1 through 100 are collectively referred to herein as “Reclining Pads Defendants.”

10 27. DOES 101 through 200 are each a person in the course of doing business
11 within the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,
12 distribute, and/or sell Mattress Toppers for sale or use in California. Defendants BED BATH &
13 BEYOND, INC.; CARPENTER CO.; and DOES 101 through 200 are collectively referred to
14 herein as “Mattress Toppers Defendants.”

15 28. DOES 201 through 300 are each a person in the course of doing business
16 within the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,
17 distribute, and/or sell Upholstered Furniture for sale or use in California. Defendants BED
18 BATH & BEYOND, INC.; DELTA ENTERPRISE CORP.; TARGET CORPORATION; and
19 DOES 101 through 200 are collectively referred to herein as “Upholstered Furniture
20 Defendants.”

21 29. DOES 301 through 400 are each a person in the course of doing business
22 within the meaning of Health & Safety Code § 25249.11. DOES 301 through 400 manufacture,
23 distribute, and/or sell Reclining Pads and Mattress Toppers for sale or use in California.

24 30. DOES 401 through 500 are each a person in the course of doing business
25 within the meaning of Health & Safety Code § 25249.11. DOES 401 through 500 manufacture,
26 distribute, and/or sell Reclining Pads and Upholstered Furniture for sale or use in California.

27 31. DOES 501 through 600 are each a person in the course of doing business
28 within the meaning of Health & Safety Code § 25249.11. DOES 501 through 600 manufacture,

1 distribute, and/or sell Mattress Toppers and Upholstered Furniture for sale or use in California.

2 32. DOES 601 through 700 are each a person in the course of doing business
3 within the meaning of Health & Safety Code § 25249.11. DOES 601 through 700 manufacture,
4 distribute, and/or sell Reclining Pads, Mattress Toppers, and Upholstered Furniture for sale or
5 use in California.

6 33. The true names of DOES 1 through 700 are unknown to CEH at this time.
7 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

8 34. The defendants identified in paragraphs 5 through 25 and DOES 1 through
9 700 are collectively referred to herein as “Defendants.”

10 **JURISDICTION AND VENUE**

11 35. 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 36. 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 Products
18 in California and/or by having such other contacts with California so as to render the exercise of
19 jurisdiction over it by the California courts consistent with traditional notions of fair play and
20 substantial justice.

21 37. 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 38. 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 39. 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 40. TDCPP has been used in consumer products as an additive flame retardant
9 since the 1960s. In the late 1970s, based on findings that exposure to TDCPP could have
10 potentially mutagenic effects, the U.S. Consumer Product Safety Commission banned the use of
11 TDCPP in children’s pajamas.

12 41. On May 29, 2009, the Proposition 65 Carcinogen Identification
13 Committee, a group of qualified experts who advise the State of California on Proposition 65
14 chemical listing determinations, announced that it was assigning priority to the preparation of
15 hazard identification materials for TDCPP, based on the chemical’s suspected carcinogenic
16 properties. 27 Cal. Code Regs. (“C.C.R.”) § 25102(c)(1). On February 11, 2011, the California
17 Environmental Protection Agency’s Office of Environmental Health Hazard Assessment
18 (“OEHHA”) announced that it was preparing hazard identification materials for TDCPP as a
19 precursor to formally identifying the chemical as carcinogenic. On July 8, 2011, OEHHA made
20 its hazard identification materials for TDCPP publicly available, and announced that the State of
21 California would be making a TDCPP listing determination by October 2011.

22 42. On October 28, 2011, the State of California officially listed TDCPP as a
23 chemical known to cause cancer. 27 C.C.R. § 27001(b). In making this listing determination,
24 OEHHA credited studies showing that exposure to TDCPP induces tumor formation in test
25 animals, and that TDCPP metabolizes into other chemicals found to have similar carcinogenic
26 properties in test subjects.

27 43. On October 28, 2012, one year after it was listed as a chemical known to
28 cause cancer, TDCPP became subject to the clear and reasonable warning requirement regarding
carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code § 25249.10(b).

1 The chief purpose of the one-year grace period between the listing date of a chemical under
2 Proposition 65 and the effective date of the warning requirement is to give potentially liable
3 parties sufficient time to come into complete compliance with this requirement, such that all
4 illegal exposures can be averted.

5 44. TDCPP is used in Products primarily as an additive flame retardant in the
6 foam padding portion. However, the use of chemical flame retardants, such as TDCPP, in foam
7 provides no appreciably greater protection from fires. Non-chemical methods, such as the use of
8 fire barriers, are far more effective at achieving fire safety benefits.

9 45. TDCPP in the Products' foam is known to migrate from such
10 foam-cushioned products into indoor household environments. Defendants' Products contain
11 sufficient quantities of TDCPP such that individuals, including infants and children, are exposed
12 to TDCPP through the average use of Products. The routes of exposure include inhalation,
13 ingestion, and/or dermal absorption by individuals. Inhalation occurs when TDCPP is released
14 from the products into the ambient environment. Ingestion and dermal absorption occur when
15 TDCPP from the products accumulates in ambient particles (*e.g.*, dust) that are subsequently
16 touched by individuals and brought into contact with the mouth.

17 46. Some Products, such as Reclining Pads, are specifically designed for
18 infants and children, and are marketed to persons who care for infants and children, such as
19 parents, teachers, and child care professionals. Infants and children spend a large proportion of
20 their time in intimate contact with such Products, which may increase their risk of TDCPP
21 exposure from inhalation and dermal absorption. Infants and children may also be especially
22 prone to ingesting ambient particles containing TDCPP from Products, given the greater amount
23 of time they spend crawling on floors and their greater tendency to put their hands in their
24 mouths. Studies show that concentrations of TDCPP in dust are higher in child care facilities
25 that use foam-cushioned napping pads than in facilities that do not. Once exposed to TDCPP,
26 infants and children may be more susceptible to its carcinogenic properties because they are
27 smaller than adults and because their bodies are still developing.

28 47. Any person acting in the public interest has standing to enforce violations

1 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
2 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
3 action within such time. Health & Safety Code § 25249.7(d).

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

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

1 50. None of the public prosecutors with the authority to prosecute violations
2 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
3 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the
4 Notices.

5 51. Defendants both know and intend that consumers in California, including
6 infants and children, will use, touch, and/or handle Products, or will come into close proximity to
7 Products, thus exposing them to TDCPP.

8 52. Under Proposition 65, an exposure is “knowing” where the party
9 responsible for such exposure has:

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

13 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
14 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
15 12201).

16 53. No clear and reasonable warning is provided with Products regarding the
17 carcinogenic hazards of TDCPP.

18 54. Defendants have been informed of the TDCPP in their Products by the 60-
19 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

20 55. Defendants also have constructive knowledge that their Products contain
21 TDCPP due to the widespread media coverage concerning the problem of TDCPP in consumer
22 products in general and in Products in particular. The problem of TDCPP in Products has been
23 the subject of articles in national newspapers, industry trade papers, and scholarly journals, as
24 well as numerous Internet weblog postings.

25 56. As companies that manufacture, import, distribute, and/or sell Products for
26 use in the California marketplace, Defendants know or should know that Products contain
27 TDCPP and that individuals who use Products, or who otherwise come into close proximity to
28 Products, will be exposed to TDCPP. These TDCPP exposures are a natural and foreseeable

1 individuals regarding the carcinogenicity of TDCPP.

2 Wherefore, CEH prays for judgment against Mattress Toppers Defendants, as set
3 forth hereafter.

4
5 **THIRD CAUSE OF ACTION**
6 **(Violations of Health & Safety Code § 25249.6)**
7 **(Against Upholstered Furniture Defendants Only)**

8 72. CEH realleges and incorporates by reference as if specifically set forth
9 herein Paragraphs 1 through 71, inclusive.

10 73. TDCPP is a chemical listed by the State of California as known to cause
11 cancer.

12 74. By placing their Upholstered Furniture into the stream of commerce,
13 Upholstered Furniture Defendants are each a person in the course of doing business within the
14 meaning of Health & Safety Code § 25249.11.

15 75. Upholstered Furniture Defendants know that average use of their
16 Upholstered Furniture will expose users of their Upholstered Furniture to TDCPP. Upholstered
17 Furniture Defendants intend that their Upholstered Furniture be used in a manner that results in
18 users of their Upholstered Furniture, and others who come into close proximity to this
19 Upholstered Furniture, being exposed to TDCPP contained therein.

20 76. Upholstered Furniture Defendants have failed, and continue to fail, to
21 provide prior clear and reasonable warnings regarding the carcinogenicity of TDCPP to users of
22 their Upholstered Furniture and others who come into close proximity to this Upholstered
23 Furniture .

24 77. By committing the acts alleged above, Upholstered Furniture Defendants
25 have at all times relevant to this Complaint violated Proposition 65 by knowingly and
26 intentionally exposing individuals to TDCPP without first giving clear and reasonable warnings
27 to such individuals regarding the carcinogenicity of TDCPP.

28 Wherefore, CEH prays for judgment against Upholstered Furniture Defendants, as
set forth hereafter.

1 **PRAYER FOR RELIEF**

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

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

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

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

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

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

17
18 Dated: February 15, 2013

Respectfully submitted,

19 LEXINGTON LAW GROUP

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21 Mark N. Todzo
22 Attorneys for Plaintiff
23 CENTER FOR ENVIRONMENTAL HEALTH
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