

1 LAW OFFICE OF DANIEL N. GREENBAUM  
Daniel N. Greenbaum, Esq. (SBN 268104)  
2 1467 South Holt Avenue #2  
Los Angeles, CA 90035  
3 Telephone: (310) 200-2631  
Facsimile: (818) 788-3847  
4 Email: danielgreenbaumesq@gmail.com

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

JUL 12 2013

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

5 Attorney for AFS ENTERPRISES LLC

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

9 AFS ENTERPRISES LLC,

) Unlimited Jurisdiction

10 Plaintiff,

) CASE NO.

**BC515013**

11 vs.

) COMPLAINT FOR CIVIL  
) PENALTY AND INJUNCTIVE  
) RELIEF

13 LDR INDUSTRIES LLC; and DOES 1 to 10,  
14 Inclusive

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

15 Defendants.

) TOXIC TORT/ENVIRONMENTAL

**BY FAX**

17  
18  
19 Plaintiff, AFS ENTERPRISES, LLC, hereby alleges:

20  
21 **I. PRELIMINARY STATEMENT**

22  
23 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure to  
24 lead, which is a chemical known to the State of California to cause birth defects, or other reproductive  
25 harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
26 section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and  
27 reasonable warning" before exposing individuals to chemicals known to the state to cause cancer or  
28 reproductive harm.

**II. PARTIES**



1 IV. STATUTORY BACKGROUND

2 A. Proposition 65

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

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

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

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

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

20 12. Any person “violating or threatening to violate” the statute may be enjoined in any court  
21 of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is defined to mean  
22 “to create a condition in which there is a substantial probability that a violation will occur.” (*Id.*, §  
23 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to \$2,500 per day for each  
24 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 the  
26 People of the State of California [or] by any district attorney [or] by any City Attorney of a City having a  
27 population in excess of 750,000 . . .” (*Id.*, § 25249.7, subd. (c).) Private parties are given authority to  
28 enforce Proposition 65 “in the public interest,” but only if the private party first provides written notice of  
a violation to the alleged violator, the Attorney General, and every District Attorney in whose jurisdiction

1 the alleged violation occurs. If no public prosecutors commence enforcement within sixty days, then the  
2 private party may sue. (Health & Saf. Code, § 25249.7(d).) No such governmental action has been  
3 pursued against Defendants.

4 B. The Unfair Competition Act

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

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

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

18 V. FACTS

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

24 18. “Lead and lead compounds” were placed in the Governor's list of chemicals known to the  
25 State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

1           19.     LDR is a manufacturer, distributor and marketer of plumbing products<sup>2</sup> for use by  
2 individuals in the home and in other occupational endeavors. Many of these parts are sold through  
3 various retailers located in California for use by citizens of the State of California.

4           20.     The products are then sold to consumers under the trade names owned by LDR for its  
5 various brands, including “LDR,” and using the associated trademarks and trade dress for those brands,  
6 including the distinctive retailer labels.

7           21.     The process followed in manufacturing the LDR products for sale to the consuming public  
8 must be approved by LDR, including the “pop up drain assembly” used by individual’s for personal use.

9           22.     Individuals who purchase, handle or install LDR products are exposed to lead chiefly  
10 through: (1) contact between the brass items and the skin, (2) transfer of lead from the skin to the mouth,  
11 both by transfer of lead directly from the hand to mouth and by transfer of lead from the skin to objects  
12 that are put in the mouth, such as food and (3) through absorption of lead through the skin. Such  
13 individuals are thus exposed to the lead that is present on and in LDR products in the course of the  
14 intended and reasonably foreseeable use of those products.

15           23.     At all times material to this complaint, Defendant LDR has had knowledge that the pop  
16 drain assembly contains lead and that skin may come into contact with lead.

17           24.     At all times material to this complaint, Defendants have had knowledge that individuals  
18 within the State of California handle LDR brass products that contain lead.

19           25.     At all times material to this complaint, Defendants knew that the LDR products were sold  
20 throughout the State of California in large numbers, and Defendants profited from such sales through,  
21 among other things, the sale of LDR products that were sold in California.

22           26.     Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the  
23 sale of LDR products that contained lead.

24           27.     At all times material to this complaint, Defendants have knowingly and intentionally  
25 exposed individuals within the State of California to lead. The exposure is knowing and intentional  
26 because it is the result of the Defendants’ deliberate act of authorizing the sale of products known to

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27  
28           <sup>2</sup> Including the “Pop up drain assembly,” UPC 019442492106, which is the subject of the “60 DAY NOTICE  
OF VIOLATION” dated March 22, 2013 and was served by Plaintiff on Defendants.

1 contain lead in a manner whereby these products were, and would inevitably be, sold to consumers within  
2 the state of California, and with the knowledge that the intended use of these products will result in  
3 exposures to lead within the State of California.

4 28. Defendant has failed to provide clear and reasonable warnings that the use of the products  
5 in question in California results in exposure to a chemical known to the State of California to cause  
6 cancer, birth defects and other reproductive harm, and no such warning was provided to those individuals  
7 by any other person.

8 VI. FIRST CAUSE OF ACTION

9 (Against All Defendants for Violation of Proposition 65)

10 29. Paragraphs 1 through 28 are re-alleged as if fully set forth herein.

11 30. By committing the acts alleged above, Defendants have, in the course of doing business,  
12 knowingly and intentionally exposed individuals in California to chemicals known to the State of  
13 California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
14 such individuals, within the meaning of Health and Safety Code section 25249.6.

15 31. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed  
16 \$2,500 per day for each violation, as well as other remedies.

17 VII. SECOND CAUSE OF ACTION

18 (Against ALL Defendants for Unlawful Business Practices)

19 32. Paragraphs 1 through 28 are re-alleged as if fully set forth herein.

20 33. By committing the acts alleged above, Defendant has engaged in unlawful business  
21 practices which constitute unfair competition within the meaning of Business and Professions Code  
22 section 17200.

23 34. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed  
24 \$2,500 per day for each violation.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiffs pray that the Court:

3 1. Pursuant to the First and Second Causes of Action, grant civil penalties  
4 according to proof;

5 2. Pursuant to Health and Safety Code section 25249.7 and Business and  
6 Professions Code section 17203, enter such temporary restraining orders, preliminary injunctions,  
7 permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State  
8 of California to Listed Chemicals caused by the use of their products without providing clear and  
9 reasonable warnings, as Plaintiffs shall specify in further application to the court;

10 3. Enter such orders as “may be necessary to restore to any person in interest any  
11 money or property, real or personal, which may have been acquired by means of” these unlawful acts,  
12 as provided in Business and Professions Code section 17203 and other applicable laws;

13 4. Award Plaintiffs their costs of suit;

14 5. Grant such other and further relief as the court deems just and proper.

15  
16 Respectfully submitted,

17 DATED: July 12, 2013

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20 By: DANIEL N. GREENBAUM  
21 Attorney for Plaintiff  
22 AFS Enterprises LLC  
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