LEXINGTON LAW GROUP
Howard Hirsch, State Bar No. 213209
Victoria Hartanto, State Bar No. 259833
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
hhirsch@lexlawgroup.com
vhartanto@lexlawgroup.com

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY
APR 24 2014
CLERK OF THE SUPERIOR COURT
By Anita Dhir
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

RG 14722774

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, vs. CECICO, INC.; FOREIGN EXCHANGE, INC.; and DOES 1 through 200, inclusive, Defendants.	Case No. _____ **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES** Health & Safety Code § 25249.6, *et seq.* (Other)

DOCUMENT PREPARED ON RECYCLED PAPER

Plaintiff Center for Environmental Health, in the public interest, based on information and belief and investigation of counsel, except for information based on knowledge, hereby makes the following allegations:

INTRODUCTION

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

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

3. Despite the fact that Defendants expose pregnant women and other consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

PARTIES

4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit corporation dedicated to protecting the public from environmental health hazards and toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the State of California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has

DOCUMENT PREPARED ON RECYCLED PAPER

prosecuted a large number of Proposition 65 cases in the public interest. These cases have resulted in significant public benefit, including the reformulation of thousands of products to remove toxic chemicals and to make them safer. CEH also provides information to Californians about the health risks associated with exposure to hazardous substances, where manufacturers and other responsible parties fail to do so.

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

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

7. DOES 1 through 200 are each a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture, distribute, and/or sell the Products for sale or use in California.

8. The true names of DOES 1 through 200 are unknown to CEH at this time. When their identities are ascertained, the Complaint shall be amended to reflect their true names.

9. The defendants identified in paragraphs 5 and 6 and DOES 1 through 200 are collectively referred to herein as "Defendants."

JURISDICTION AND VENUE

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

11. This Court has jurisdiction over Defendants because each is a business entity that does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market through the sale, marketing, or use of the Products in California and/or by having such other contacts with California so as to render the

exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

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

BACKGROUND FACTS

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

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

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

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

16. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were

listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

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

18. There is no safe level of exposure to Lead and even minute amounts of Lead exposure have been proven harmful to children and adults. Studies have repeatedly concluded that concentrations of Lead in children's blood previously deemed acceptable can have adverse health effects. *See, e.g.*, Canfield, R.L., *et al.*, "Intellectual Impairment in Children with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine* 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the smallest detectable amount of blood Lead levels in children can mean the difference between an A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

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

DOCUMENT PREPARED ON RECYCLED PAPER

20. Defendants' Products contain sufficient quantities of Lead such that consumers, including pregnant women, who wear, touch or handle the Products are exposed to Lead through the average use of the Products. The routes of exposure for the violations are ingestion via hand-to-mouth contact after consumers wear, touch or handle the Products, and dermal absorption directly through the skin when consumers wear, touch or handle the Products. These exposures occur in homes, workplaces, and everywhere else throughout California where these Products are handled or used.

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

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

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

24. CEH also sent a Certificate of Merit for each Notice to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to each of the named Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that CEH's counsel: (1) has consulted with one or more persons with relevant

and appropriate experience or expertise who reviewed facts, studies, or other data regarding the exposures to Lead alleged in each Notice; and (2) based on the information obtained through such consultations, believes that there is a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the 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.

25. 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 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of CEH's Notices.

26. Defendants both know and intend that individuals, including pregnant women, will wear, touch, or handle the Products, thus exposing them to Lead.

27. Under Proposition 65, an exposure is "knowing" where the party responsible for such exposure has:

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

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

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

29. Defendants also have constructive knowledge that their Products contain Lead due to the widespread media coverage concerning the problem of Lead in consumer products in general and in products made of leather, vinyl, or imitation leather materials in particular.

DOCUMENT PREPARED ON RECYCLED PAPER

30. As companies that manufacture, import, distribute, and/or sell the Products for use in the California marketplace, Defendants know or should know that the Products contain Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to consumers who use the Products are a natural and foreseeable consequence of Defendants' placing the Products into the stream of commerce.

31. Nevertheless, Defendants continue to expose consumers, including pregnant women, to Lead without prior clear and reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.

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

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

FIRST CAUSE OF ACTION

(Violations of the Health & Safety Code § 25249.6)

34. CEH realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 33, inclusive.

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

36. Lead is a chemical listed by the State of California as known to cause cancer, birth defects, and other reproductive harm.

37. Defendants know that average use of the Products will expose users of the Products to Lead. Defendants intend that the Products be used in a manner that results in exposures to Lead from the Products.

38. Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of

DOCUMENT PREPARED ON RECYCLED PAPER

the Products.

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

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

PRAYER FOR RELIEF

Wherefore, CEH prays for judgment against Defendants as follows:

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

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

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

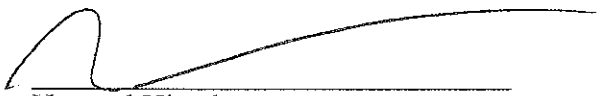
4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: April 24, 2014

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

DOCUMENT PREPARED ON RECYCLED PAPER