

ENCLOSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

1 ALAN M. CAPLAN (SBN 49315)
2 APRIL M. STRAUSS, Of Counsel (SBN 163327)
3 BUSHNELL, CAPLAN & FIELDING, LLP
4 221 Pine Street, Suite 600
San Francisco, CA 94104
Telephone: (415) 217-3800
Facsimile: (415) 217-3820

CASE MANAGEMENT CONFERENCE SET

2003 JUN -5 AM 10:52

DEPARTMENT 212 CLERK

PLAN 1 NOV 07 2003 900 AM

PAUL MATT
DEPARTMENT 212

5 (Additional Attorneys on Signature Page)
DEPARTMENT 212

6 Attorneys for Plaintiff ENVIRONMENTAL LAW FOUNDATION

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

10 ENVIRONMENTAL LAW FOUNDATION,
11 Individually and On Behalf of the General
12 Public,

13 Plaintiff,

14 v.

15 COST PLUS, INC., SAFEWAY, INC.,
16 TRADER JOE'S COMPANY, WILLIAMS-
SONOMA, INC., WHOLE FOODS, INC.,
and DOES 1 through 100, inclusive,

17 Defendants.

CASE NO. 03G-03-421108

**COMPLAINT FOR CIVIL
PENALTIES, STATUTORY,
EQUITABLE AND INJUNCTIVE
RELIEF BASED UPON:**

- (1) Violation of Cal. Health & Safety Code § 25249.6 *et seq.*;
- (2) Violation of Cal. Bus. & Prof. Code § 17200, *et seq.* - Unlawful Business Practice Predicated on Cal. Health & Safety Code § 25249.6 *et seq.*;
- (3) Violation of Cal. Bus. & Prof. Code § 17200, *et seq.* - Unlawful Business Practices predicated on violations of § 1750, *et seq.*, of the Cal. Civil Code; Consumer Legal Remedies Act;
- (4) Violation of Cal. Bus. & Prof. Code § 17200, *et seq.* - Unlawful Business Practices predicated on violations of Cal. Civil Code § 1714; Negligence; and
- (5) Violation of Cal. Bus. & Prof. Code § 17200, *et seq.* (Unfair Business Practices).

18 **TYPE OF ACTION:**
19 **Local Rule 2.3(1):**
(a) Unfair Business Practices
20 **Plaintiff DEMANDS A TRIAL**
21 **BY JURY**

1 Plaintiff, by its attorneys, brings this action on its own behalf and on behalf of the
2 General Public on information and belief, except those allegations which pertain to the
3 named Plaintiff or to its attorneys (which are alleged on personal knowledge), and hereby
4 alleges as follows:

5
6 **INTRODUCTION**
The Hazards of Lead

7 1. This action seeks, among other remedies, restitution, civil penalties and
8 injunctive relief to redress the actions of Defendants now resulting in widespread exposure
9 of men, women and children to lead, a known toxin to the human reproductive system,
10 threatening their health and well being. Specifically, Plaintiff challenges Defendants'
11 manufacture, distribution, promotion and sale of vinegars that are contaminated with lead,
12 presenting a risk of reproductive harm and other adverse health effects, resulting in human
13 exposure to lead without prior warning. Defendants' actions, including, but not limited to,
14 their failure to provide prior warnings as required by law, violate California Health & Safety
15 Code §§ 25249.6 *et seq.* and constitute an unfair and unlawful business practice in violation
16 of California Business and Professions Code § 17200, *et seq.*

17 2. According to a June 1999 report on lead by the Agency for Toxic Substances
18 and Disease Registry ("ATSDR") (an agency of the U.S. Department of Health and Human
19 Services):

20
21 Lead can affect almost every organ and system in your body. The
22 most sensitive is the central nervous system, particularly in
23 children. Lead also damages kidneys and the reproductive
24 system. The effects are the same whether it is breathed or
25 swallowed. At high levels, lead may decrease reaction time,
26 cause weakness in fingers, wrists, or ankles, and possibly affect
27 the memory. Lead may cause anemia, a disorder of the blood. It
28 can also damage the male reproductive system. . . . Children are
more vulnerable to lead poisoning than adults. A child who
swallows large amounts of lead may develop blood anemia,
severe stomachache, muscle weakness, and brain damage. . . .
Exposure to lead is more dangerous for young and unborn
children. Unborn children can be exposed to lead through their
mothers. Harmful effects include premature births, smaller
babies, decreased mental ability in the infant, learning

1 difficulties, and reduced growth in young children.

2 ATSDR, ToxFAQs for Lead (visited May 7, 2003)
3 <<http://www.atsdr.cdc.gov/tfacts13.html>>.

4 3. On February 27, 1987, California Governor George Deukmejian declared lead
5 a reproductive toxin subject to Proposition 65. Proposition 65 requires that consumers must
6 be warned before they are exposed to chemicals/metals that cause birth defects and/or
7 reproductive harm. (The Safe Drinking Water and Toxic Enforcement Act, California
8 Health and Safety Code § 25249.6, *et seq.*, also known as "Proposition 65").

9 4. By exposing consumers to lead without providing any warning, Defendants
10 have violated and will continue to violate Proposition 65. Additionally, by committing the
11 acts set forth herein Defendants have committed, and unless enjoined will continue to violate
12 Proposition 65 and commit, unlawful and unfair business practices under California Business
13 and Professions Code § 17200, *et seq.* Plaintiff is therefore entitled to civil penalties.
14 Plaintiff is also entitled to injunctive relief to compel Defendants to:

15 (A) Comply with the requirements of Proposition 65 in the sale and
16 distribution of their vinegars, including its requirement that the ultimate consumers of
17 Defendants' vinegars be provided with a clear and reasonable warning that the ingestion of
18 Defendants' products results in exposure to lead, a known reproductive toxin;

19 (B) Undertake an immediate and comprehensive public information program to
20 alert all consumers (past, present or future) of Defendants' vinegars at issue herein of the
21 inherent risk of lead exposure in these products; and

22 (C) To provide full and complete restitution to the purchasers of these
23 products.

24 PARTIES

25 5. Plaintiff ENVIRONMENTAL LAW FOUNDATION ("ELF") is a California
26 nonprofit organization founded on Earth Day in 1991. ELF has a longstanding interest in
27 reducing health hazards to the public posed by lead, and particularly to protect those with the
28 least choice and greatest vulnerability to toxic risks: children, inner city dwellers, and

1 workers. ELF is dedicated to the preservation and enhancement of human health and the
2 environment. ELF brings this action on its own behalf, and pursuant to California Business
3 and Professions Code § 17204 and Health and Safety Code § 25249.7(d) in the interest of the
4 general public.

5 6. Cost Plus, Inc. ("Cost Plus") is a California corporation with its principal place
6 of business located at 200 Fourth Street Oakland, CA 94607. Cost Plus sells wine vinegar,
7 including, but not limited to, Balsamic Vinegar (Cost Plus/V), Old Acetaia Balsamic Vinegar
8 of Modena, Balsamic Vinegar of Modena, and Aged Balsamic Vinegar, that contains lead.

9 7. Safeway, Inc. ("Safeway") is a Delaware corporation with its principal place of
10 business located at 5918 Stoneridge Mall Road, Pleasanton, CA 94588-3229. Safeway sells
11 wine vinegar, including, but not limited to, Balsamic Vinegar of Modena, that contains lead.

12 8. Trader Joe's Company ("Trader Joe's") is a California corporation with its
13 principal place of business located at 800 South Shamrock Street, Monrovia, California
14 91016. Trader Joe's sells wine vinegar, including, but not limited to, Trader Joe's Gold
15 Quality Balsamic Vinegar, Trader Giottos Balsamic Vinegar of Modena, and Trader Joe's
16 Balsamic Vinegar of Modena Italy, that contains lead.

17 9. Williams-Sonoma, Inc. ("Williams-Sonoma") is a California corporation with
18 its principal place of business located at 3250 Van Ness Avenue San Francisco, CA 94109.
19 Williams-Sonoma sells wine vinegar, including, but not limited to, Vinaigre de Vin de
20 Chateaufneuf du Pape, Cask 85 Cabernet Vinegar, Vinaigre Vieux de Vin Rouge 7,
21 Balsamico Dispensa 15, and Aceto Balsamico di Modena, that contains lead.

22 10. Whole Foods Market, Inc. ("Whole Foods") is a Texas corporation with its
23 principal place of business located at 601 N. Lamar, Ste. 300 Austin, TX 78703. Whole
24 Foods sells wine vinegar, including, but not limited to, Balsamic Vinegar of Modena, and
25 BR Cohn, that contains lead.

26 11. Each of the Defendants herein has employed ten (10) or more persons at all
27 times relevant to this action.

28 12. The true names and capacities of Defendants sued herein under California

1 Code of Civil Procedure §474 as DOES 1 through 100, inclusive, are presently unknown to
2 Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff will seek to
3 amend this Complaint and include these Doe Defendants' true names and capacities when
4 they are ascertained. Each of the fictitiously named Defendants is responsible in some
5 manner for the conduct alleged herein and for the injuries suffered by the general public.

6 13. At all times herein mentioned in the causes of action into which this paragraph
7 is incorporated by reference, each and every defendant was an agent or employee of each and
8 every other defendant. In doing the things alleged in the cause of action into which this
9 paragraph is incorporated by reference, each and every defendant was acting within the
10 course and scope of this agency or employment, and was acting with the consent, permission,
11 and authorization of each of the remaining Defendants. All actions of each defendant
12 alleged in the causes of action into which this paragraph is incorporated by reference were
13 ratified and approved by every other defendant or their officers or managing agents, and by
14 agreeing to actively conceal the true facts as alleged herein. Alternatively, Defendants aided,
15 conspired with and/or facilitated the wrongful conduct of other Defendants.

16 JURISDICTION AND VENUE

17 14. This Court has jurisdiction over all causes of action asserted herein pursuant to
18 the California Constitution, Article XI, Section 10, because this case is a cause not given by
19 statute to other trial courts.

20 15. This Court has jurisdiction over Defendants named herein because Defendants
21 either are located in this State or are foreign corporations authorized to do business in
22 California and registered with the California Secretary of State, or who do sufficient business
23 in California, have sufficient minimum contacts with California, or otherwise intentionally
24 avail themselves of the markets within California through the promotion, sale, marketing and
25 distribution of their products in California to render the exercise of jurisdiction by the
26 California courts permissible under traditional notions of fair play and substantial justice.

27 16. Venue is proper in this Court because the products at issue are advertised,
28 promoted, sold and used in this County, a substantial portion of the transactions complained

1 of herein occurred here, contracts relating to the purchase of this product were entered into,
2 made and were to be performed in this County, and Defendants have received substantial
3 compensation from the sale of the product at issue in this County by doing business here and
4 making numerous misrepresentations which had an effect in this County.

5 17. With respect to violations of Health and Safety Code § 25249.6, *et seq.*, on
6 February 28, 2003, pursuant to Health and Safety Code § 25249.7, Plaintiff mailed
7 appropriate notices of the violations of section 25249.6 of Proposition 65 by Safeway, Cost
8 Plus, Williams-Sonoma, Whole Foods, Trader Joe's, as alleged herein. The "Notices of
9 Violation of Proposition 65" were mailed to each of the these Defendants, as well as to the
10 California Attorney General, the District Attorney of every county in California, and the City
11 Attorneys of any cities with populations according to the most recent decennial census of
12 over 750,000 in whose jurisdiction some of the violations of Proposition 65 occurred. Each
13 notice included a certificate of merit executed by Plaintiff's attorneys stating that the person
14 executing the certificate had consulted with one or more persons with relevant and
15 appropriate experience or expertise who has reviewed the facts, studies or other data
16 regarding exposure to lead, and that, based on that information, the person executing the
17 certificate believes there is a reasonable and meritorious case for this private action. The
18 factual information sufficient to establish the basis of the certificate of merit has been
19 attached to the certificate of merit served on the California Attorney General.

20 18. None of these public prosecutors has commenced and is diligently prosecuting
21 an action against the violations at issue herein, although the notice period provided in §
22 25249.7 has elapsed since such notice was provided.

23 STATUTORY AND REGULATORY BACKGROUND

24 19. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative
25 statute passed as Proposition 65 by a vote of the People in 1986.

26 20. Proposition 65 provides the circumstances under which persons must be
27 warned before they are exposed to chemicals/metals that cause cancer, birth defects, or other
28

1 reproductive harm. Health and Safety Code § 25249.6 states the warning requirement:

2 "No person in the course of doing business shall knowingly and intentionally
3 expose any individual to a chemical known to the state to cause cancer or
4 reproductive toxicity without first giving clear and reasonable warning to such
5 individual, except as provided in section 25249.10."

6 21. Proposition 65 establishes a procedure by which the Governor lists chemicals
7 known to the state to cause reproductive toxicity. Health and Safety Code § 25249.8.

8 Pursuant to this authority, Governor George Deukmejian on February 27, 1987 placed lead
9 on the list of reproductive toxins. The State of California has established the specific
10 regulatory level for lead at 0.5 micrograms/day. 26 CCR § 22 12805(a).

11 22. The warning requirement under Proposition 65 for a given chemical goes into
12 effect one year after the Governor places that chemical on the list. Health and Safety Code §
13 25249.10(b). Therefore, lead became subject to a Proposition 65 warning on February 27,
14 1988.

15 FACTS

16 23. Vinegar is a condiment regularly used in almost every type of food and style of
17 cooking. It's a ubiquitous ingredient for dressings, mayonnaise and mustards.

18 24. Regulations under the Nutrition Labeling and Education Act of 1990 have set
19 the serving size for vinegar at one (1) tablespoon. 21 C.F.R. § 101.12(b) (Table 2).

20 25. Defendants Cost Plus, Safeway, Trader Joe's, Williams-Sonoma, and Whole
21 Foods manufacture, sell, and/or distribute a variety of vinegars labeled, marketed and
22 intended for human consumption, including, but not limited to those listed in paragraphs 6-
23 10, *supra*. These vinegars are manufactured, distributed and/or sold in the State of
24 California for the purpose of distribution and retail sale in California.

25 26. The vinegar at issue in this Complaint contains lead which results in human
26 exposure to the lead upon its consumption without prior warning.

27 27. Plaintiff is informed and believes and thereon alleges that the Defendants knew
28 and/or reasonably should have known, that the foreseeable use of their vinegar results in
exposure to lead, and that the levels of lead so released exceed the lead exposure levels (*i.e.*,

1 0.5 micrograms per day) which trigger Proposition 65's warning requirements.

2 28. Nevertheless, and in violation of California Business and Professions Code §
3 17200, *et seq.* and California Health and Safety Code § 25249.6, *et seq.*, the Defendants have
4 not labeled, marked or used signs, shelf warnings, or any indicia whatsoever that warns or
5 informs the public that their vinegars contain and expose consumers to lead, a chemical
6 known to the State of California to cause reproductive toxicity. Defendants have in the
7 course of doing business, knowingly and intentionally, and recklessly and negligently,
8 exposed individuals to a chemical known to the State of California to cause reproductive
9 toxicity without first providing a clear and reasonable warning as required by California
10 Health and Safety Code §§ 25249.6 and 25249.11(f). Defendants have also promoted and
11 marketed its vinegar for sale without any warning regarding the levels of lead exposure. As
12 a direct result of Defendants' acts and omissions, the general public in California is being
13 regularly, unlawfully, and involuntarily exposed to lead, a known reproductive toxin.

14 **FIRST CAUSE OF ACTION**

(California Health and Safety Code §§ 25249.6 *et seq.*)
15 (Against All Defendants)

16 29. Plaintiff incorporates by reference ¶¶ 1 through 28 as if fully set forth herein.

17 30. The people of the State of California have declared in Proposition 65 their
18 right "[t]o be informed about exposure to chemicals that cause cancer, birth defects or other
19 reproductive harm." Proposition 65, § 1(b).

20 31. To carry out those statutory purposes, Proposition 65 requires that a clear and
21 reasonable warning be given by persons who, in the course of doing business, knowingly and
22 intentionally expose any individual to a chemical known to the State of California to cause
23 reproductive harm.

24 32. On February 27, 1987, Governor Deukmejian listed lead as a chemical known
25 to the State of California to cause reproductive toxicity. No warning need be given
26 concerning a chemical so listed until one year after the chemical first appears on the list. *Id.*,
27 § 25249.10(b). Lead, therefore, one year later became subject to the warning requirements
28 of Proposition 65.

1 33. Proposition 65 provides that any person "violating or threatening to violate"
2 the statute may be enjoined in any court of competent jurisdiction. *Id.*, § 25249.7. In
3 addition, violators are liable for civil penalties of up to \$2,500.00 per day per violation,
4 recoverable in a civil action. *Id.*, § 25249.7(b).

5 34. Defendants have engaged and continue to engage in conduct which violates
6 Health and Safety Code § 25249.6. This conduct includes the manufacturing, packaging,
7 marketing, distributing and selling of vinegars the foreseeable use of which results in
8 exposing the public to lead, known to the State of California to cause reproductive toxicity,
9 without first providing a clear and reasonable warning pursuant to Health and Safety Code
10 §§ 25249.6 and 25249.11(f). Defendants have, therefore, in the course of doing business,
11 knowingly and intentionally exposed individuals to a chemical known to the State of
12 California to cause reproductive toxicity without first providing a clear and reasonable
13 warning.

14 35. By the above-described acts, Defendants are liable, pursuant to Health and
15 Safety Code § 25249.7(b), for a civil penalty of up to \$2,500.00 per day per individual
16 exposure to lead through Defendants' vinegars.

17 WHEREFORE, Plaintiff prays for judgment as set forth below.

18 **SECOND CAUSE OF ACTION**
19 (Unlawful Business practices in violation of
20 California Business and Professions Code § 17200 *et seq.*)
21 (Predicated on California Health and Safety Code § 25249.6)

22 36. Plaintiff incorporates by reference ¶¶ 1 through 35 as if fully set forth herein.

23 37. California Business and Professions Code § 17200 provides that unfair
24 competition shall mean and include any "unlawful . . . business practice."

25 38. Proposition 65 requires that a clear and reasonable warning be given by
26 persons who, in the course of doing business, knowingly and intentionally expose any
27 individual to a chemical known to the State of California to cause reproductive harm.

28 39. Defendants have, in the course of doing business, knowingly and intentionally
exposed individuals to lead without first providing a clear and reasonable warning in

1 violation of Proposition 65 and thereby engaged in a *per se* unlawful business practice
2 constituting unfair competition in violation of California Business and Professions Code §§
3 17200 *et seq.*

4 WHEREFORE, Plaintiff prays for judgment as set forth below.

5 **THIRD CAUSE OF ACTION**
6 (Unlawful Business Practice in Violation of
7 California Business and Professions Code § 17200,
8 Predicated on Violation of California Civil Code
9 § 1750, *et seq.*: Consumer Legal Remedies Act)

10 40. Plaintiff incorporates by reference ¶¶ 1 through 39 as if fully set forth herein.

11 41. California Business & Professions Code § 17200 provides that unfair
12 competition shall mean and include an "unlawful . . . business practice."

13 42. The acts and practices alleged herein were intended to result in the sale of
14 Defendants' products to the consuming public, and violated and continue to violate the
15 Consumer Legal Remedies Act (the "Act"), California Civil Code § 1750, *et seq.*, in at least
16 the following respects:

17 (a) In violation of § 1770(a)(5) of the Act, Defendants' acts and practices
18 constitute misrepresentation that their goods have characteristics, uses, and benefits which
19 they do not have (*i.e.*, that these vinegars can be consumed safely when in fact, they
20 expose men, women and children to lead); and

21 (b) In violation of § 1770(a)(7) of the Act, Defendants' acts and practices
22 constitute misrepresentation that their goods are of a particular standard, quality and/or
23 grade when they are another (*i.e.*, that these vinegars are safe under normal use when in
24 fact, they expose men, women and children to lead under normal use);

25 Accordingly, Defendants have also violated Business & Professions Code § 17200
26 proscription against engaging in an unlawful business practice.

27 WHEREFORE, Plaintiff prays for judgment as set forth below.

28 ///

///

///

1 **FOURTH CAUSE OF ACTION**
2 (Unlawful Business Practice in Violation of
3 California Business and Professions Code § 17200,
4 Predicated on Violation of California
5 Civil Code § 1714: Negligence.)

6 43. Plaintiff incorporates by reference ¶¶1 through 42 as if fully set forth herein.

7 44. Defendants had a duty to properly and safely produce, manufacture and sell
8 their products in a manner that would not result in exposure to a hazard to human health.
9 Defendants were negligent in their manufacturing, distribution and/or sale of their
10 vinegars by allowing and/or causing the products to contain lead that exposes children,
11 women and men to it when such vinegars are ingested. The Defendants were negligent in
12 that they knew, or in the exercise of reasonable care should or could have known, that
13 their conduct would allow or cause lead to contaminate its vinegars. The lead contained
14 in these products was thus a foreseeable consequence of Defendants' negligence in using
15 it in the manufacturing process.

16 45. Defendants, in failing to use the requisite degree or ordinary care and skill in
17 the management of their manufacturing processes, violated the requirements of California
18 Civil Code § 1714. Accordingly, the Defendants have violated California Business and
19 Professions Code § 17200's proscription against engaging in an unlawful business practice
20 by violating California Civil Code §§ 17200 *et seq.*

21 WHEREFORE, Plaintiff prays for judgment as set forth below.

22 **FIFTH CAUSE OF ACTION**
23 (Violation of California Business and Professions
24 Code § 17200, *et seq.*– Unfair Business Practices)

25 46. Plaintiff incorporates by reference paragraphs 1 through 45 above.

26 47. California Business and Profession Code § 17200 provides that unfair
27 competition shall mean and include any "unfair . . . business practice."

28 48. As alleged in the preceding paragraphs, the misrepresentation and
nondisclosure by Defendants of the material facts detailed above constitutes an unfair

1 business practice within the meaning of Business and Professions Code § 17200.

2 WHEREFORE, Plaintiff prays for judgment as set forth below.

3
4 **THE NEED FOR INJUNCTIVE RELIEF**

5 49. By committing the acts alleged herein, the Defendants have caused
6 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the
7 absence of equitable relief, the general public will continue to be involuntarily exposed to
8 lead which is contained in Defendants' vinegars, creating substantial risk of irreparable
9 physical injury.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for the following relief:

12 A. A temporary restraining order, preliminary and permanent injunction
13 enjoining the Defendants, their agents, employees, assigns, and all persons acting in
14 concert or participating with them from:

15 (1) selling and distributing their vinegars which contain lead in
16 California, without first providing, to the ultimate consumers and users, a clear and
17 reasonable warning that the foreseeable consumption of such vinegars results in exposure
18 to lead, a chemical known to the State of California to be a reproductive toxin;

19 (2) failing to undertake a court-approved public information campaign to
20 warn and inform the general public that consumption of Defendants' vinegars which
21 contain lead results in exposure to lead, a chemical known to the State of California to be
22 a reproductive toxin and identifying steps that may be taken to reduce such exposure;

23 (3) failing and refusing to make full and complete restitution to the
24 members of the general public of all monies acquired by means of any act found by this
25 court to be an unlawful or unfair business practice under Business and Professions Code
26 §§ 17200 *et seq.* and taking all other steps necessary to make members of the public whole
27 from the acts and omissions of Defendants complained of herein;

28 (4) failing and refusing to disgorge all monies acquired by means of any

1 act found by this court to be an unlawful or unfair business practice under Business and
2 Professions Code §§ 17200 *et seq.*;

3 B. An award of statutory penalties of \$2500 for each violation of Proposition
4 65 throughout the State of California

5 C. Reasonable attorneys' fees and costs;

6 D. Such other and further relief as this court may deem necessary and proper.

7
8 DATED: June 4, 2003

BUSHNELL, CAPLAN & FIELDING
ALAN M. CAPLAN
APRIL M. STRAUSS, Of Counsel

10
11 ALTSHULER, BERZON, NUSSBAUM,
12 RUBIN & DEMAIN
13 FRED H. ALTSHULER

14 ENVIRONMENTAL LAW FOUNDATION
15 JAMES R. WHEATON

16
17 

18 ALAN M. CAPLAN
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

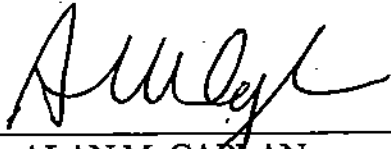
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on each and every cause of action.

DATED: June 4, 2003

BUSHNELL, CAPLAN & FIELDING, LLP

ALAN M. CAPLAN
APRIL M. STRAUSS, Of Counsel

By 
ALAN M. CAPLAN
Attorneys for Plaintiff