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Los Angeles Superior Court

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John A. Clarke, Executive Officer/Clerk
By S. Gabb Deputy

1 THE CARRICK LAW GROUP
A PROFESSIONAL CORPORATION
2 Roger Lane Carrick (State Bar No. 096342)
350 S. Grand Avenue, Suite 2930
3 Los Angeles, California 90071-3406
Telephone: (213) 346-7930
4 Facsimile: (213) 346-7931

5 Attorney for Plaintiff
AMERICAN ENVIRONMENTAL SAFETY INSTITUTE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 AMERICAN ENVIRONMENTAL SAFETY
INSTITUTE, a non-profit California
12 corporation,

13 Plaintiff,

14 v.

15 THE PROCTER & GAMBLE DISTRIBUTING
COMPANY, a Ohio corporation; THE
16 PROCTER & GAMBLE MANUFACTURING
COMPANY, a Ohio corporation; and DOES 1 -
17 100,

18 Defendants.

Case No.

BC 334309

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES;
DEMAND FOR JURY TRIAL**

Health & Safety Code § 25249 *et seq.*

(Other)

20 Plaintiff, by and through its counsel, hereby alleges the following on information

21 and belief:

22 **INTRODUCTION**

23 1. This complaint seeks to remedy the continuing failure of THE PROCTER &
24 GAMBLE DISTRIBUTING COMPANY, THE PROCTER & GAMBLE MANUFACTURING
25 COMPANY, and DEFENDANT DOES 1 through 100, to warn individuals in California that
26 they are being exposed to Lead and Lead and lead compounds (collectively, "Lead"), toxic
27 heavy metals known to the State of California to cause both cancer and reproductive toxicity,
28 when those individuals use Defendants' toothpaste products ("Products").

1 7. Defendants THE PROCTER & GAMBLE DISTRIBUTING COMPANY and
2 THE PROCTER & GAMBLE MANUFACTURING COMPANY (collectively, "Procter &
3 Gamble"), which are Ohio corporations with its headquarters and principal place of business
4 located at One Procter & Gamble Plaza, Cincinnati, OH 45201. Procter & Gamble
5 manufacturers, distributes, and sells its Products across the United States, including in
6 California, through various distributors and retail outlets. Procter & Gamble is a person in the
7 course of doing business within the meaning of H&S Code § 25249.11.

8 8. DEFENDANT DOES 1 through 100, inclusive, are each a person in the course of
9 doing business within the meaning of H&S Code § 25249.11. DEFENDANT DOES 1 through
10 100 manufacture and/or distribute toothpaste products that contain Lead for sale and/or use in
11 California.

12 9. The true names of DEFENDANT DOES 1 through 100 are unknown to Plaintiff
13 at this time. When their identities are ascertained, the complaint shall be amended to reflect their
14 true names.

15 10. The term "Defendants" as used herein is defined to mean collectively, Procter &
16 Gamble and DEFENDANT DOES 1 through 100.

17 STATUTORY AND REGULATORY BACKGROUND

18 11. The People of the State of California declared, in adopting Proposition 65 in 1986
19 as an initiative statute, their right "[t]o be informed about exposures to chemicals that cause
20 cancer, birth defects and other reproductive harm." Proposition 65, § 1(b).

21 12. To effectuate this goal, Proposition 65 requires that individuals be provided with a
22 clear and reasonable warning before being exposed to chemicals listed by the Governor of the
23 State of California as causing cancer or birth defects and other reproductive harm, unless the
24 person (including businesses) responsible for the exposure can prove that such exposure is
25 otherwise lawful, as follows:

26 No person in the course of doing business shall knowingly and
27 intentionally expose any individual to a chemical known to the state
28 to cause cancer or reproductive toxicity without first giving clear
and reasonable warning to such individual....H&S Code § 25249.6

1 13. Defendants Products are distributed to, and for the use of, California consumers.
2 Defendants have sold and distributed its Products in California continuously in the four years
3 preceding the filing of this action.

4 14. The Products contain Lead, which comes into contact with consumers' skin, and
5 may also be inhaled and/or ingested, when consumers use Defendants' Products as
6 recommended by the Products' directions for use as supplied by Defendants.

7 15. Defendants know that its Products contain Lead, and that individuals are exposed
8 to the Lead contained in each of the Products through the intended and foreseeable use of its
9 Products.

10 16. The Products' directions for use state the manner in which Defendants intends its
11 Products be applied. The use of the Products in this manner results in exposing consumers in
12 California to the Lead contained in each of the Products.

13 17. Since June 10, 2003, Defendants have not provided a clear and reasonable
14 warning regarding the carcinogenicity or reproductive toxicity caused by exposure to Lead from
15 use of the Products sold after that date.

16 18. Defendants fail to provide any disclosure that its Products contain Lead, or any
17 disclosure or warning as to the potential adverse health effects to human beings from contact
18 with or ingestion of Lead, or any disclosure or warning that the State of California has officially
19 determined Lead to be known to cause cancer and reproductive toxicity.

20 19. Defendants know or should reasonably know that its failure to disclose the
21 presence of Lead in its Products, while at the same time promoting its Products in a fashion
22 likely to create expectations of safety and well-being among the users of its Products, is likely to
23 deceive, and is deceiving, consumers and the general public in California regarding the nature
24 and safety of Defendant's Products.

25 20. Any person, including the Institute, has standing to enforce violations of
26 Proposition 65, provided that such person has supplied the requisite public enforcers with a
27 Sixty-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
28 within their respective jurisdictions within such time. H&S Code § 25249.7(d). On or about

1 June 10, 2004, the Institute served a Sixty-Day "Notice of Violation of Proposition 65" (the
2 "Notice") on The Procter & Gamble Distributing Company, The Procter & Gamble
3 Manufacturing Company, Zooth, Inc., the California Attorney General, the District Attorneys of
4 every county in California, and the City Attorneys of every California city with a population
5 greater than 750,000. The Institute accomplished service of the Notice on the Defendants in full
6 and complete compliance with each specific requirement of 22 CCR § 12903, including but not
7 limited to the inclusion of the following information in each Notice: The Institute's name and
8 contact address; the Institute's attorney of record; the name and address of the violator; the
9 statute violated; the time period during which violations occurred; the routes of exposure to Lead
10 from the Products and specific descriptions of the violations, including product categories and
11 specific illustrative examples of Products sold in violation of Proposition 65, as well as
12 identifying Lead as the specific Proposition 65-listed chemicals that are the subject of the
13 violations described in the Notice. None of the public enforcers has subsequently commenced or
14 prosecuted an action against the Defendants. The Institute's Notice regarding Lead was sent at
15 least sixty-days prior to the filing of the Complaint. The Institute also complied fully and
16 completely with H&S Code § 25249.7 as amended, in that the Institute provided the required
17 certificates of merit for its Notice to each of the alleged violators and to the California Attorney
18 General.

19 21. Defendant's failure to provide warnings in violation of Proposition 65 constitutes
20 an act that may be enjoined by the Court pursuant to H&S Code § 25249.7(a).

21 22. Plaintiff seeks such injunctive relief to compel each Defendant to provide
22 California purchasers and users of the Products with clear and reasonable warnings regarding the
23 presence and known health hazards of exposure to the Lead contained in the Products.

24 23. Proposition 65 provides for civil penalties up to \$2,500 per day for each violation
25 of Proposition 65 pursuant to H&S Code §25249.7(b)

26 24. Plaintiff seeks civil penalties against each Defendant for its violations of
27 Proposition 65.

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1 **JURISDICTION AND VENUE**

2 25. The Court has jurisdiction over this action pursuant to H&S Code § 25249.7(a),
3 which allows enforcement in any court of competent jurisdiction. The California Superior Court
4 has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which
5 grants the Superior Court “original jurisdiction in all cases except those given by statute to other
6 trial courts.” The statutes under which this action is brought do not grant jurisdiction to any
7 other trial court.

8 26. This Court has jurisdiction over Defendants because, based on information and
9 belief, Defendants are corporations that have sufficient minimum contacts in California, is a
10 citizen of California, or otherwise intentionally avails itself of the California market either
11 through the distribution or sale of the Products in the State of California or by having a
12 manufacturing, distribution or other facility located in California so as to render the exercise of
13 jurisdiction over it by the California courts consistent with traditional notions of fair play and
14 substantial justice.

15 27. Venue is proper in the Los Angeles Superior Court because numerous violations
16 alleged above have occurred and are occurring in the County of Los Angeles.

17 **FIRST CAUSE OF ACTION**

18 **(Unlawful Acts of Knowingly and Intentionally Exposing**

19 **Individuals to Lead as a Carcinogen in Violation of**

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

21 **By Defendants The Procter & Gamble Distributing Company;**

22 **The Procter & Gamble Manufacturing Company and Does 1 – 100)**

23 28. Plaintiff realleges and incorporates by reference as if specifically set forth herein
24 Paragraphs 1 through 27 inclusive.

25 29. From June 10, 2003, and continuing to the present, each Defendants has sold its
26 Products in California. Each Defendant has failed, and continues to fail, to provide clear and
27 reasonable warnings regarding the carcinogenicity of Lead to users of its Products, as required
28 by Proposition 65.

1 **THE NEED FOR INJUNCTIVE RELIEF**

2 34. Plaintiff realleges and incorporates by reference as if specifically set forth herein
3 Paragraphs 1 through 33 inclusive.

4 35. By committing the acts alleged herein, each Defendant has caused irreparable
5 harm for which there is no plain, speedy or adequate remedy at law. In the absence of equitable
6 relief, the general public will continue to be involuntarily exposed to Lead in these Products,
7 creating substantial risk of irreparable physical injury, without a clear and reasonable warning,
8 creating a clear and present danger to public health and welfare.

9 **PRAYER FOR RELIEF**

10 Plaintiff prays for judgment against each Defendant as follows:

11 **On The First and Second Causes of Action:**

12 1. That the Court, pursuant to H&S Code § 25249.7(a), preliminarily and
13 permanently enjoin each Defendant from offering its respective Products for sale without
14 disclosing the presence of Lead in such Products in a manner that complies with the
15 Proposition 65 statutory warning requirements, as Plaintiff shall specify in further application to
16 the Court;

17 **On The First and Second Cause of Action:**

18 2. That the Court, pursuant to H&S Code § 25249.7(b), assess civil penalties against
19 each Defendant in an amount to be determined by the Court for each violation of Proposition 65
20 alleged herein since June 10, 2003;

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1 **On All Causes of Action:**

- 2 3. For costs of this action;
3 4. For attorney's fees and costs;
4 5. For interest according to law;
5 6. For such other and further relief as this Court may deem just and proper.

6
7 Date: June 1, 2005

Respectfully submitted,

8 THE CARRICK LAW GROUP
9 A Professional Corporation

10
11 By 

Roger Lane Carrick
Attorney for Plaintiff

American Environmental Safety Institute

12
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a trial by jury on the first and second causes of action.

15
16 Date: June 1, 2005

Respectfully submitted,

17 THE CARRICK LAW GROUP, P.C.

18
19 By 

ROGER LANE CARRICK
Attorneys for Plaintiff

American Environmental Safety Institute

CERTIFICATE OF SERVICE

I, Kimberly A.K. Burgo, declare as follows:

I am a citizen of the United States and a resident of the County of Los Angeles; I am over the age of 18 years and am not a party to the within action or proceeding. I am employed by the law firm of The Carrick Law Group, a Professional Corporation, located at 350 S. Grand Avenue, Suite 2930, Los Angeles, California 90071. I am readily familiar with The Carrick Law Group's business practice for collection and processing of correspondence for overnight delivery with United Parcel Service ("UPS"), and am aware that envelopes placed for collection and overnight delivery within the firm of The Carrick Law Group will be deposited with an authorized UPS processing center on the same day for overnight delivery to the addressee.

On June 1, 2005, pursuant to Health and Safety Code section 25249.7(f), as amended, I served the within:

**REPORT OF CIVIL COMPLAINT FILING – re:
*American Environmental Safety Institute v. The Procter & Gamble
Distributing Company, et al.*; Los Angeles County Superior Court
Case No. BC334309**

in said cause, by placing a true and correct copy thereof in envelopes addressed as follows:

State of California – Department of Justice
Attorney General's Office
Proposition 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, California 94612
Attn: Prop 65 Coordinator

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 1, 2005, at Los Angeles, California.



Kimberly A.K. Burgo