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San Francisco County Superior Court

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GORDON PARK-LI, Clerk
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CASE MANAGEMENT CONFERENCE SET

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DEPARTMENT 212
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
Eric S. Somers, State Bar No. 139050
Lynne R. Saxton, State Bar No. 226210
1627 Irving Street
San Francisco, CA 94122
Telephone: (415) 759-4111
Facsimile: (415) 759-4112

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

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

Plaintiff,)

v.)

BIG DOGS USA, INC., and Defendant DOES 1)
through 200, inclusive,)

Defendants.)

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

(Other)

1 Products in California and/or by having such other contacts with California so as to render the
2 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
3 play and substantial justice.

4 11. Venue is proper in the San Francisco Superior Court because one or more
5 of the violations arise in the County of San Francisco.

6 **BACKGROUND FACTS**

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

10 13. To effectuate this goal, Proposition 65 requires that individuals be
11 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
12 State of California as known to cause cancer, birth defects and other reproductive harm unless
13 the business responsible for the exposure can prove that it fits within a statutory exemption.

14 Health & Safety Code §25249.6 states, in pertinent part:

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

18 14. On February 27, 1987, the State of California officially listed Lead as a
19 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
20 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
21 the developing fetus, “female reproductive toxicity,” which means harm to the female
22 reproductive system, and “male reproductive toxicity,” which means harm to the male
23 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,
24 1988, one year after it was listed as a chemical known to cause reproductive toxicity, Lead
25 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
26 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

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

1 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
2 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
3 §12000(c); Health & Safety Code §25249.10(b).

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

14 17. There is no safe level of exposure to Lead and even minute amounts of
15 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard,
16 DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One recent study on the effect
17 of childhood Lead exposure declared that even the smallest detectable amount of blood Lead
18 levels in children can mean the difference between an A or B grade in school. Lanphear, BP,
19 Dietrich, K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents";
20 *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into
21 adulthood and found a sevenfold increase in the risk for developing a reading disability among
22 children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger,
23 D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in
24 Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

25 18. Defendants' Products contain sufficient quantities of Lead such that
26 consumers, including children, who handle the Products and handle and ingest items stored
27 inside the Products are exposed to Lead through the average use of the Products. These
28 exposures occur through direct ingestion when consumers place items that have been stored in

1 the Products in their mouths, ingestion via hand to mouth contact after consumers touch or
2 handle the Products or items that have been stored in the Products, and dermal absorption
3 directly through the skin when consumers touch or handle the Products or items that have been
4 stored in the Products.

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

9 20. On October 13, 2005, CEH provided a 60-Day "Notice of Violation of
10 Proposition 65" to the California Attorney General, the District Attorneys of every county in
11 California, the City Attorneys of every California city with a population greater than 750,000 and
12 to the named Defendant. The October 13, 2005 Notice of Violation is referred to herein as the
13 "Notice". In compliance with Health & Safety Code §25249.7(d) and 22 CCR §12903(b), the
14 Notice included the following information: (1) the name and address of the violator; (2) the
15 statute violated; (3) the time period during which violations occurred; (4) specific descriptions of
16 the violations, including (a) the routes of exposure to Lead from the Products and (b) Product
17 categories, with a specific non-exclusive example of a Product that is sold and used in violation
18 of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical (Lead) that is
19 the subject of the violation described in the Notice.

20 21. CEH also sent a Certificate of Merit for the Notice to the California
21 Attorney General, the District Attorneys of every county in California, the City Attorneys of
22 every California city with a population greater than 750,000 and to the named Defendant. In
23 compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the Certificate certified
24 that CEH's counsel: (1) has consulted with one or more persons with relevant and appropriate
25 experience or expertise who reviewed facts, studies or other data regarding the exposures to Lead
26 alleged in the Notice; and (2) based on the information obtained through such consultations,
27 believes that there is a reasonable and meritorious case for a citizen enforcement action based on
28 the facts alleged in the attached Notice. In compliance with Health & Safety Code §25249.7(d)

1 and 11 CCR §3102, the Certificate served on the Attorney General included factual information –
2 provided on a confidential basis – sufficient to establish the basis for the Certificate, including
3 the identity of the person(s) consulted by CEH’s counsel and the facts, studies or other data
4 reviewed by such persons.

5 22. None of the public prosecutors with the authority to prosecute violations
6 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the
7 Proposition 65 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims
8 asserted in the Notice.

9 23. Defendants both know and intend that individuals, including children, will
10 handle the Products and handle and ingest items stored inside the Products, thus exposing them
11 to Lead.

12 24. The Products are typically made from polyvinyl chloride (“PVC”). The
13 association between PVC and Lead exposure has been widely discussed in the media in recent
14 years, with particular attention given to products made from PVC that are marketed exclusively
15 to children. Defendants’ Products are also made with pigments, many of which contain Lead.
16 Many of the Defendants’ Products are exclusively made for and marketed to children.

17 25. Defendants have been informed of the Lead in their Products by the 60-
18 day notice of violation served on them by CEH and from newspaper reports.

19 26. Nevertheless, Defendants continue to expose consumers, including
20 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
21 reproductive hazards of Lead.

22 27. CEH has engaged in good-faith efforts to resolve the claims alleged herein
23 prior to filing this complaint.

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

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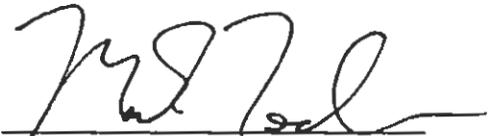
3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by Defendants, as CEH shall specify in further application to the Court;

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

5. That the Court utilize its inherent equitable power to grant such other and further relief as may be just and proper.

Dated: January 17, 2006

Respectfully submitted,
LEXINGTON LAW GROUP, LLP



Mark N. Todzo, Esq.
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH