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CASE MANAGEMENT CONFERENCE SET

JUN 16 2006 09 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-06-448597

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation, Plaintiff, v. ROMAR INTERNATIONAL CORPORATION, and Defendant DOES I through 200, inclusive, Defendants.	Case No. _____ **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES** Health & Safety Code §25249.6 *et seq.*; (Other)

Plaintiff Center for Environmental Health, in the public interest, based on information and belief and investigation of counsel, except for information based on personal 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, birth defects and other reproductive harm. Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale and use of defendants' soft food and beverage containers that contain Lead (the "Products"). The Products include, but are not limited to, soft lunch boxes, lunch bags and coolers. Consumers, including children, are exposed to Lead when they handle the Products and when they handle or ingest the food and drinks stored inside the Products.

2. Under California's Proposition 65, Health and 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 soft food and beverage containers contaminated with significant quantities of Lead directly into the California marketplace, exposing consumers of their Products, many of whom are children, to Lead.

3. Despite the fact that defendants expose children 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 environmental advocacy group that has prosecuted a large number of Proposition 65 cases in the public interest. These cases have resulted in significant public benefit, including reformulation of toxic products to make them safer and the provision of clear and reasonable warnings on hundreds of products sold throughout California. 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 Romar International Corporation ("Romar") is a person in the course of doing business within the meaning of Health & Safety Code §25249.11. Romar manufactures, distributes and/or sells the Products for sale and use in California.

6. DOES 1-200 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.

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

8. Romar and DOES 1 through 200 are collectively referred to herein as "Defendants."

JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to Health & Safety Code §25249.7, which allows enforcement in any court of competent jurisdiction. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except those given by statute to other trial courts." The statutes under which this action is brought do not grant jurisdiction to any other trial court.

10. This Court has jurisdiction over the 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.

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

BACKGROUND FACTS

12. 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).

13. To effectuate this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to chemicals listed by the State of California as known to cause cancer, birth defects and other reproductive harm 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. . .

14. 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. 22 California Code of Regulations ("CCR") §12000(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. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

15. 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. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

16. 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.

17. There is no safe level of exposure to Lead and even minute amounts of Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard, DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One recent 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, BP, Dietrich, K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into adulthood and found a sevenfold increase in the risk for developing a reading disability among children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger, D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

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

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

19. 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).

20. On October 13, 2005, 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 the named Defendant. The October 13, 2005 Notice of Violation is referred to herein as the "Notice". In compliance with Health & Safety Code §25249.7(d) and 22 CCR §12903(b), the Notice included the following information: (1) the name and address of the 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) Product categories, with a specific non-exclusive example of a Product that is sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical (Lead) that is the subject of the violation described in the Notice.

21. CEH also sent a Certificate of Merit for the 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 the named Defendant. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the 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 the 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 the attached Notice. In compliance with Health & Safety Code §25249.7(d)

and 11 CCR §3102, the 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.

22. 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 the Proposition 65 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims asserted in the Notice.

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

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

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

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

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

28. 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 probabilitythat 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)

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

30. By placing the Products into the stream of commerce, Defendants are a person in the course of doing business within the meaning of Health & Safety Code §25249.11.

31. 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 users of the Products being exposed to Lead contained in the Products.

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

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

34. By committing the acts alleged above, the 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, Plaintiff prays judgment against the Defendants, as set forth hereafter.

PRAYER FOR RELIEF

Wherefore, Plaintiff 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 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;

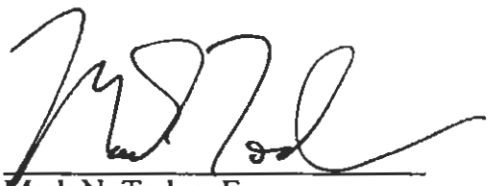
4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

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



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