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6 CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED
FILED**
San Francisco County Superior Court

AUG 31 2005

GORDON PARRY, Clerk
BY: ELIAS BUTT
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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

14 Plaintiff,)

15 v.)

16 ROSS STORES, INC.; BIG LOTS, INC.; TOYS)
17 " R US, INC.; TOYSRUS.COM, LLC;)
18 WALGREEN COMPANY; and Defendant)
DOES 1 through 200, inclusive,)

19 Defendants.)
20

Case No. ~~08C-05-444~~ 522

COMPLAINT FOR INJUNCTIVE
RELIEF, CIVIL PENALTIES AND
RESTITUTION

Health & Safety Code §25249.6 et sey.;

(Other)

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

4 INTRODUCTION

5 1. This complaint seeks to remedy defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer, birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of defendants' **soft** food and beverage containers that
10 contain Lead (the "Products"). The Products include, but are not limited to, **soft** lunch boxes,
11 lunch bags and coolers. Consumers, including children, are exposed to Lead when they handle
12 the Products and when they handle or ingest the food and drinks stored inside the Products.

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

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

24 PARTIES

25 4. Plaintiff Center For Environmental Health ("**CEH**") is a non-profit
26 corporation dedicated to protecting the public from environmental health hazards and toxic
27 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
28 California. CEH is a "person" within the meaning of Health & Safety Code 525249.11(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**

1 prosecuted a large number of Proposition 65 cases in the public interest. These **cases** have
2 resulted in significant public benefit, including reformulation of toxic products to make them
3 safer and the provision of clear and reasonable **warnings** on hundreds of products sold throughout
4 California. CEH also provides **information** to Californians about the health risks associated with
5 exposure to hazardous substances, where manufacturers and other responsible parties fail to do
6 SO

7 5. Defendant Ross Stores, **Inc.** ("Ross") is a person in the course of doing
8 business within the meaning of Health & Safety Code 525249.11. Ross manufactures, distributes
9 and/or sells the Products for sale and use in California.

10 6. Defendant Big Lots, **Inc.** ("Big Lots") is a person in the course of doing
11 business within the meaning of Health & Safety Code 825249.11. Big Lots manufactures,
12 distributes and/or sells the Products for sale and use in California.

13 7. Defendant Toys "R" Us, **Inc.** ("Toys 'R' Us") is a person in the course of
14 doing business within the meaning of Health & Safety Code 525249.11. Toys "R" Us
15 manufactures, distributes **and/or** sells the Products for sale and use in California.

16 8. Defendant Toysrus.com, LLC ("**Toysrus.com**") is a person in the course of
17 doing business within the meaning of Health & Safety Code 525249.11. Toysrus.com
18 manufactures, distributes **and/or** sells the Products for sale and use in California.

19 9. Defendant Walgreen Company ("**Walgreen**") is a person in the course of
20 doing business within the meaning of Health & Safety Code 825249.11. Walgreen manufactures,
21 distributes **and/or** sells the Products for sale and use in California.

22 10. DOES 1-200 are each a person in the course of doing business within the
23 meaning of Health & Safety Code 525249.11. DOES 1 through 200 manufacture, distribute
24 and/or sell the Products for sale or use in California.

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

28 12. The Defendants identified in paragraphs 5- 9 and DOES 1 through 200 are
collectively **referred** to herein as "Defendants."

1 the developing fetus, "female reproductive toxicity," which means **harm to the female**
2 reproductive system, and "male reproductive toxicity," which means harm to **the male**
3 reproductive system. 22 California Code of Regulations ("CCR) §12000(c). On **February 27,**
4 1988, one year after it was listed as a chemical known to cause reproductive toxicity, **Lead**
5 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
6 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

7 19. On **October 1, 1992,** the State of California officially listed lead and lead
8 compounds as chemicals known to cause cancer. On **October 1, 1993,** one year **after** they were
9 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
10 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
11 §12000(c); Health & Safety Code §25249.10(b).

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

22 21. There is no safe level of exposure to Lead and even minute amounts of
23 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, **Svendgaard,**
24 DJ; "Lead and Child Development"; *Nature* **329:297-300,** 1987. One recent study on the effect
25 of childhood Lead exposure declared that even the smallest detectable amount of blood Lead
26 levels in children can mean the difference between an A or B grade in school. **Lanphear, BP,**
27 Dietrich, K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in **U.S.**Children and Adolescents";
28 *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,**

1 D. Leviton, A. Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in
2 Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

3 22. Defendants' Products contain sufficient quantities of Lead such that
4 consumers, including children, who handle the Products and handle and ingest items stored
5 inside the Products are exposed to Lead through the average use of the Products. These
6 exposures occur through direct ingestion when consumers place items that have been stored in
7 the Products in their mouths, ingestion via hand to mouth contact after consumers touch or
8 handle the Products or items that have been stored in the Products, and dermal absorption
9 directly through the skin when consumers touch or handle the Products or items that have been
10 stored in the Products.

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

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

26 25. CEH also sent a Certificate of Merit for the Notice to the California
27 Attorney General, the District Attorneys of every county in California, the City Attorneys of
28 every California city with a population greater than 750,000 and to the named Defendants. In

1 compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the Certificate **certified**
2 that CEH's counsel: (1) has consulted with one or more persons with relevant and appropriate
3 experience or expertise who reviewed facts, studies or other data regarding the exposures to Lead
4 alleged in the Notice; and (2) based on the information obtained through such consultations,
5 believes that there is a reasonable and meritorious case for a citizen enforcement action based on
6 the facts alleged in the attached Notice. In compliance with Health & Safety Code §25249.7(d)
7 and 11 CCR 53102, the Certificate served on the Attorney General included factual information -
8 **provided** on a confidential basis – sufficient to establish the basis for the Certificate, including
9 the identity of the **person(s)** consulted by **CEH's** counsel and the facts, studies or other data
10 reviewed by such persons.

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

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

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

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

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

28 31. CEH has engaged in good-faith efforts to resolve the claims alleged herein

1 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
2 Proposition 65 according to proof;

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

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

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

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

14
15 Dated: August 31, 2005

Respectfully submitted,

LEXINGTON LAW GROUP, LLP

17
18
19 

Mackenzie Holzman

20 CENTER FOR ENVIRONMENTAL
21 HEALTH

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)
Mark N. Todzo, State Bar No. 168389
Lexington Law Group, LLC
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(415) 759-4111

ENDORSED
FILED
San Francisco County Superior Court
SPACE BELOW FOR COURT USE ONLY

JAN 17 2005

GORDON PARK LI, Clerk
BY: WESLEY RAMIREZ
Deputy Clerk

ATTORNEY(S) FOR:

AMENDMENT TO
COMPLAINT

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN FRANCISCO

CASE NUMBER

CGC-05-444522

Center for Environmental Health

vs. Ross Stores, Inc., et. al.

Plaintiff(s)

Defendant(s)

FICTITIOUS NAME [SEC. 474 C.C.P.]

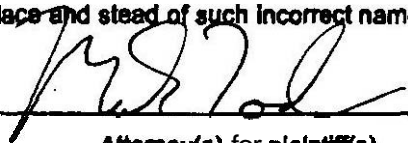
Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant, and having designate said defendant in the complaint by the fictitious name of:

Doe 5

and having discovered the true name of the said defendant to be:

Kmart Corporation

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.


Attorney(s) for plaintiff(s)

INCORRECT NAME [SEC. 473 (a)(1) C.C.P.]

Plaintiff(s) heving designated a defendant in the complaint by the incorrect name of

and having discovered the true name of the said defendant to be

hereby amend(s) the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

Attorney(s) for Plaintiff(s)

ORDER

Pmper cause appearing, the above amendment to the complaint is allowed.

Dated: _____

Judge

ENDORSED
FILED
San Francisco County Superior Court
SPACE BELOW FOR COURT USE ONLY
JAN 17 2005

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)

Mark N. Todzo, State Bar No. 168389
Lexington Law Group, LLC
1627 Irving Street, San Francisco, CA 94122
(415) 759-4111

GORDON PARK-LI, Clerk
By: WESLEY RAMIREZ
Deputy Clerk

ATTORNEY(S) FOR:

AMENDMENT TO COMPLAINT	SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO	CASE NUMBER CGC-05-444522
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Center for Environmental Health vs. Ross Stores. Inc., et. al.
Plaintiff(s) Defendant(s)

FICTITIOUS NAME [SEC. 474 C.C.P.]

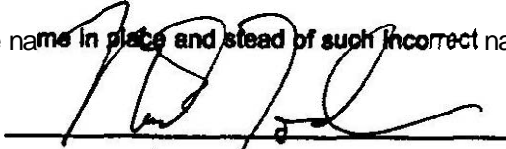
Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant, and having designated said defendant in the complaint by the fictitious name of:

Doe 6

and having discovered the true name of the said defendant to be:

Big Lots Stores, Inc.

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.



Attorney(s) for plaintiff(s)

INCORRECT NAME [SEC. 473 (a)(1) C.C.P.]

Plaintiff(s) having designated a defendant in the complaint by the incorrect name of

and having discovered the true name of the said defendant to be

hereby amend(s) the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

Attorney(s) for Plaintiff(s)

ORDER

Proper cause appearing, the above amendment to the complaint is allowed.

Dated: _____

Judge

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)
Mark N. Todzo, State Bar No. 168389
Lexington Law Group, LLP
1627 Irving Street, San Francisco, CA 94122
(415) 759-4111

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ATTORNEY(S) FOR:

AMENDMENT TO
COMPLAINT

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN FRANCISCO

CASE NUMBER
CGC-05-444522

Center for Environmental Health vs. Ross Stores, Inc., et. al.
Plaintiff(s) Defendant(s)

FICTITIOUS NAME [SEC. 474 C.C.P.]


Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant, and having designated said defendant in the complaint by the fictitious name of:

Doe 7

and having discovered the true name of the said defendant to be:

Burlington Coat Factory Warehouse Corporation

hereby amends the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.


Attorney(s) for plaintiff(s)

INCORRECT NAME [SEC. 473 (a)(1) C.C.P.]

Plaintiff(s) having designated a defendant in the complaint by the incorrect name of

and having discovered the true name of the said defendant to be

hereby amend(s) the complaint by inserting such true name in place and stead of such incorrect name wherever it appears in said complaint.

Attorney(s) for Plaintiff(s)

ORDER

Prmpcr cause appearing, the above amendment to the complaint is allowed.

Dated: _____

Judge

NAME, ADDRESS, TELEPHONE NUMBER OF ATTORNEY(S)
Mark N. Todzo, State Bar No. 168389
Lexington Law Group, LLP
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ATTORNEY(S) FOR:

AMENDMENT TO
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SUPERIOR COURT OF CALIFORNIA,
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CASE NUMBER

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Center for Environmental Health

vs. Ross Stores, Inc., et. al.

Plaintiff(s)

Defendant(s)

FICTITIOUS NAME [SEC. 474 C.C.P.]

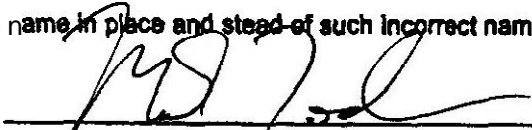
Upon filing the complaint herein, **plaintiff(s)** being **ignorant** of the **true** name of a defendant, and having designated said **defendant** in the complaint by the **fictitious** name of:

Doe 8

and having discovered the **true** name of the said defendant to be:

Burlington Coat Factory Warehouse of Hayward, Inc.

hereby amends the **complaint** by **inserting such true name in place and stead of such incorrect name** wherever it appears in **said** complaint.


Attorney(s) for plaintiff(s)

INCORRECT NAME [SEC. 473 (a)(1) C.C.P.]

Plaintiff(s) having designated a defendant in the complaint by **the** incorrect name of

and having discovered **the** true name of the said defendant to be

hereby amend **(~)the complaint** by inserting such **hue name in place** and **~tee of such incorrect** name wherever it appears in said complaint.

Attorney(s) for Plaintiff(s)

ORDER

Proper **cause** appearing, the **above** amendment to the complaint is **allowed**.

Dated: _____

Judge