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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

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

16 Plaintiff,)

17 v.)

18 DANARA INTERNATIONAL, LTD. and)
19 Defendant DOES 1 through 200, inclusive,)

20 Defendants.)
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CASE MANAGEMENT CONFERENCE SET
OCT 05 2007 - 9:00 AM
DEPARTMENT 212

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2007 MAY 2 AM 11:54

GORDON PARK - LI. CLERK

Deborah Steppe

BY: _____
DEPUTY CLERK

CGC-07-462991

Case No. _____

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code §25249.6 et seq.

(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' baby bibs that contain Lead (the
10 "Products"). Individuals, particularly babies and children, are exposed to Lead when they use,
11 handle, mouth, or otherwise touch the Products, and when they handle or ingest the food and
12 drinks that come into contact with 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 baby bibs contaminated with significant quantities of Lead directly into the California
18 marketplace, exposing consumers of their Products, many of whom are babies and children, to
19 Lead.

20 3. Despite the fact that defendants expose babies, children and other
21 consumers to Lead, then provide no warnings whatsoever about the carcinogenic or reproductive
22 hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision
23 of 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 §25249.11(a) and

1 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
2 play and substantial justice.

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

5 **BACKGROUND FACTS**

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

9 13. To effectuate this goal, Proposition 65 requires that individuals be
10 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
11 State of California as known to cause cancer, birth defects and other reproductive harm unless
12 the business responsible for the exposure can prove that it fits within a statutory exemption.
13 Health & Safety Code §25249.6 states, in pertinent part:

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

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

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

1 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
2 §12000(c); Health & Safety Code §25249.10(b).

3 16. Babies and children are especially susceptible to the toxic effects of Lead.
4 Babies and children show a greater sensitivity to Lead's effects than do adults. Adverse health
5 impacts from Lead exposure generally occur in babies and children at lower blood Lead levels
6 than in adults. Babies and children absorb and retain more Lead in proportion to their weight
7 than do adults. Babies and children also show a greater prevalence of iron deficiency, a
8 condition that can increase gastrointestinal absorption of Lead. The body accumulates Lead over
9 a lifetime and releases it slowly, so even small doses received in infancy or childhood, over time,
10 can cause adverse health impacts, including but not limited to reproductive toxicity, later in life.
11 For example, in times of physiological stress, such as pregnancy, the body can mobilize
12 accumulated stores of Lead in tissue and bone, thereby increasing the level of Lead in the blood
13 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, J.M.,
16 Svendgaard, D.J.; "Lead and Child Development"; *Nature* 329:297-300, 1987. One recent study
17 on the effect of childhood Lead exposure declared that even the smallest detectable amount of
18 blood Lead levels in children can mean the difference between an A or B grade in school.
19 Lanphear, B.P., Dietrich, K., Auinger, P., and Cox, C.; "Subclinical Lead Toxicity in U.S.
20 Children and Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study
21 followed children into adulthood and found a sevenfold increase in the risk for developing a
22 reading disability among children exposed to sufficient levels of Lead as toddlers. Needleman,
23 H.L., Schell, A., Bellinger, D., Leviton, A., and Allred, E.N.; "The Long-Term Effects of
24 Exposure to Low Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England*
25 *Journal of Medicine*; 322:83-88, 1990. A 2004 study concluded that concentrations of lead in
26 children's blood previously deemed acceptable can have adverse health effects. Canfield, R.L.,
27 Henderson, Jr., C.R., Clory-Slechta, D.A., Cox, C., Jusko, T.A., and Lanphear, B.P.; "Intellectual
28 Impairment in Children with Blood Lead Concentrations below 10 ug per Deciliter," *New*

1 *England Journal of Medicine*, 348:1517-1526, 2004. A 2006 study found that prenatal exposure
2 to Lead has lasting detrimental effects on intellectual development of children. Schnaas, L.,
3 Rothenberg, S.J., Flores, M., Martinez, S., Hernandez, C., Osorio, E., Velasco, S.R., Perroni, E.;
4 "Reduced Intellectual Development in Children with Prenatal Lead Exposure"; *Environmental*
5 *Health Perspectives*; 114:791-797, 2006.

6 18. Defendants' Products contain sufficient quantities of Lead such that
7 consumers, including babies and children, are exposed to Lead during normal use of the
8 Products. Such exposures to Lead occur via direct ingestion when consumers, including babies
9 and children, mouth the Products or items that have touched the Products; via hand to mouth
10 contact when consumers, including babies and children, touch their mouths after handling or
11 coming into contact with the Products; and/or via dermal absorption directly through the skin
12 when consumers, including babies and children, touch or handle the Products or items that have
13 touched the Products.

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

18 20. On December 22, 2006, CEH provided a 60-Day "Notice of Violation of
19 Proposition 65" (the "Notice") to the California Attorney General, the District Attorneys of every
20 county in California, the City Attorneys of every California city with a population greater than
21 750,000 and to Danara. In compliance with Health & Safety Code §25249.7(d) and 22 CCR
22 §12903(b), the Notice included the following information: (1) the name and address of the
23 violator; (2) the statute violated; (3) the time period during which violations occurred; (4)
24 specific descriptions of the violations, including (a) the routes of exposure to Lead from the
25 Products and (b) Product categories, with a specific non-exclusive example of a Product that is
26 sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-
27 listed chemical (Lead) that is the subject of the violation described in the Notice.

28 21. CEH also sent a Certificate of Merit for the Notice to the California

1 Attorney General, the District Attorneys of every county in California, the City Attorneys of
2 every California city with a population greater than 750,000 and to the named Defendant. In
3 compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, the Certificate certified
4 that CEH's counsel: (1) has consulted with one or more persons with relevant and appropriate
5 experience or expertise who reviewed facts, studies or other data regarding the exposures to Lead
6 alleged in the Notice; and (2) based on the information obtained through such consultations,
7 believes that there is a reasonable and meritorious case for a citizen enforcement action based on
8 the facts alleged in the attached Notice. In compliance with Health & Safety Code §25249.7(d)
9 and 11 CCR §3102, the Certificate served on the Attorney General included factual information –
10 provided on a confidential basis – sufficient to establish the basis for the Certificate, including
11 the identity of the person(s) consulted by CEH's counsel and the facts, studies or other data
12 reviewed by such persons.

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

17 23. Defendants both know and intend that individuals, including babies and
18 children, will handle and/or mouth the Products, and handle, mouth, or ingest items that come
19 into contact with the Products, thus exposing them to Lead.

20 24. The Products are typically made from polyvinyl chloride ("PVC"). The
21 association between PVC and Lead exposure has been widely discussed in the media in recent
22 years, with particular attention given to products made from PVC that are marketed exclusively
23 to babies and children. The Products are exclusively made and marketed for use by babies and
24 children.

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

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

1 reproductive hazards of Lead.

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

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

9 **FIRST CAUSE OF ACTION**
10 **(Violations of the Health & Safety Code §25249.6)**

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

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

15 31. Defendants know that average use of the Products will expose users of the
16 Products to Lead. Defendants intend that the Products be used in a manner that results in users
17 of the Products being exposed to Lead contained in the Products.

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

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

23 34. By committing the acts alleged above, the Defendants have at all times
24 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
25 individuals to Lead without first giving clear and reasonable warnings to such individuals
26 regarding the carcinogenicity and reproductive toxicity of Lead.

27 35. By committing the acts alleged above, the Defendants have at all times
28 relevant to this complaint threatened to violate Proposition 65 by knowingly and intentionally

1 introducing the Products into the stream of commerce without providing an accompanying
2 warning.

3 Wherefore, Plaintiff prays judgment against the Defendants, as set forth hereafter.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for judgment against Defendants as follows:

6 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
7 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
8 Proposition 65 according to proof;

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

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

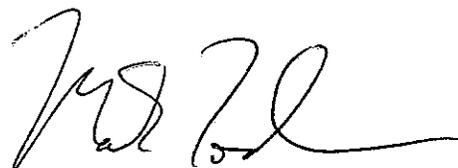
16 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other
17 applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

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

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21 Dated: May 1, 2007

Respectfully submitted,

22 LEXINGTON LAW GROUP, LLP

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