

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

MAY 15 2007

GORDON PARK-LI, CLERK

BY: _____
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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

Plaintiff,)

v.)

DANARA INTERNATIONAL, LTD.; CROWN)
CRAFTS, INC; HAMCO, INC; and Defendant)
DOES 1 through 200, inclusive,)

Defendants.)

Case No. CGC 07-462991

**FIRST AMENDED 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 First Amended Complaint seeks to remedy defendants' continuing
6 failure to warn individuals in California that they are being exposed to lead and lead compounds
7 (collectively, "Lead"), chemicals known to the State of California to cause cancer, birth defects
8 and other 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 those given by statute to other trial courts.” The statutes under which this action is brought do
2 not grant jurisdiction to any other trial court.

3 12. This Court has jurisdiction over the Defendants because each is a business
4 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
5 intentionally avails itself of the California market through the sale, marketing or use of the
6 Products in California and/or by having such other contacts with California so as to render the
7 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
8 play and substantial justice.

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

11 BACKGROUND FACTS

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

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

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

24 16. On February 27, 1987, the State of California officially listed Lead as a
25 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
26 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
27 the developing fetus, “female reproductive toxicity,” which means harm to the female
28 reproductive system, and “male reproductive toxicity,” which means harm to the male
29 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,

1 1988, one year after it was listed as a chemical known to cause reproductive toxicity, Lead
2 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
3 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

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

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

20 19. There is no safe level of exposure to Lead and even minute amounts of
21 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,
22 Svendgaard, D.J.; "Lead and Child Development"; *Nature* 329:297-300, 1987. One recent study
23 on the effect of childhood Lead exposure declared that even the smallest detectable amount of
24 blood Lead levels in children can mean the difference between an A or B grade in school.
25 Lanphear, B.P., Dietrich, K., Auinger, P., and Cox, C.; "Subclinical Lead Toxicity in U.S.
26 Children and Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study
27 followed children into adulthood and found a sevenfold increase in the risk for developing a
28 reading disability among children exposed to sufficient levels of Lead as toddlers. Needleman,

1 H.L., Schell, A., Bellinger, D., Leviton, A., and Allred, E.N.; "The Long-Term Effects of
2 Exposure to Low Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England*
3 *Journal of Medicine*; 322:83-88, 1990. A 2004 study concluded that concentrations of lead in
4 children's blood previously deemed acceptable can have adverse health effects. Canfield, R.L.,
5 Henderson, Jr., C.R., Clory-Slechta, D.A., Cox, C., Jusko, T.A., and Lanphear, B.P.; "Intellectual
6 Impairment in Children with Blood Lead Concentrations below 10 ug per Deciliter," *New*
7 *England Journal of Medicine*, 348:1517-1526, 2004. A 2006 study found that prenatal exposure
8 to Lead has lasting detrimental effects on intellectual development of children. Schnaas, L.,
9 Rothenberg, S.J., Flores, M., Martinez, S., Hernandez, C., Osorio, E., Velasco, S.R., Perroni, E.;
10 "Reduced Intellectual Development in Children with Prenatal Lead Exposure"; *Environmental*
11 *Health Perspectives*; 114:791-797, 2006.

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

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

24 22. On December 22, 2006, CEH provided a 60-Day "Notice of Violation of
25 Proposition 65" (the "First Notice") to the California Attorney General, the District Attorneys of
26 every county in California, the City Attorneys of every California city with a population greater
27 than 750,000 and to Danara. On March 2, 2007, CEH provided a 60-Day "Notice of Violation of
28 Proposition 65" (the "Second Notice") to the California Attorney General, the District Attorneys

1 of every county in California, the City Attorneys of every California city with a population
2 greater than 750,000 and to Crown Crafts and Hamco. The First and Second Notices are referred
3 to herein together as the "Notices." In compliance with Health & Safety Code §25249.7(d) and
4 22 CCR §12903(b), the Notices included the following information: (1) the name and address of
5 the violator(s); (2) the statute violated; (3) the time period during which violations occurred; (4)
6 specific descriptions of the violations, including (a) the routes of exposure to Lead from the
7 Products and (b) Product categories, with a specific non-exclusive example of a Product that is
8 sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-
9 listed chemical (Lead) that is the subject of the violation described in the Notices.

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

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

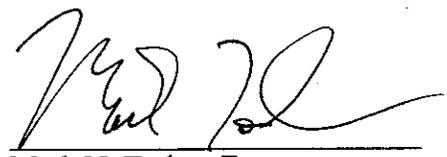
28 25. Defendants both know and intend that individuals, including babies and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: May 15, 2007

Respectfully submitted,
LEXINGTON LAW GROUP, LLP



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