

DOROTHY L. LEE
ALAMEDA COUNTY

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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

COGHLAN'S LTD., and Defendant DOES I
through 200, inclusive,

Defendants.

RC 07 - 355965
Case No. _____

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code §25249.6 et seq.

(Other)

COPY

1 Plaintiff Center for Environmental Health, in the public interest and on behalf of
2 the general public, based on information and belief and investigation of counsel, except for
3 information based on personal 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, a chemical known to the State of
7 California to cause cancer, birth defects and other reproductive harm. Such exposures have
8 occurred, and continue to occur, through the manufacture, distribution, sale and consumer use of
9 Defendants' rainwear (the "Products"). Consumers are exposed to lead when they wear or
10 otherwise handle the Products. The route of exposure for the violations is direct ingestion when
11 consumers place the Products in their mouths, ingestion via hand to mouth contact after
12 consumers touch or handle the Products, and dermal absorption directly through the skin when
13 consumers touch, handle or wear the Products. Some of the Products are designed for and
14 marketed to children, who are particularly likely to place the Products in their mouths and who
15 are also particularly susceptible to hand to mouth contact exposures. These exposures occur in
16 homes, workplaces and everywhere else throughout California where the Products are used.

17 2. Under California's Proposition 65, Health and Safety Code §25249.5 *et*
18 *seq.*,¹ it is unlawful for businesses to knowingly and intentionally expose individuals in
19 California to chemicals known to the State to cause cancer and/or birth defects or other
20 reproductive harm without providing clear and reasonable warnings to individuals prior to their
21 exposure. Despite the fact that Defendants' Products expose consumers to lead, Defendants
22 provide no warnings whatsoever about the carcinogenic or reproductive hazards of lead.
23 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety
24 Code §25249.6.

25 PARTIES

26 3. Plaintiff Center for Environmental Health ("CEH") is a non-profit
27 corporation dedicated to protecting the public from environmental health hazards and toxic
28

¹ All statutory references herein are to California statutes, unless otherwise noted.

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

3 15. The Products contain sufficient quantities of Lead such that consumers
4 who wear or touch the Products are exposed to Lead through the reasonably foreseeable use of
5 the Products. No clear and reasonable warning is provided with the Products regarding the
6 carcinogenic or reproductive hazards of Lead.

7 16. Defendants both know and intend that the Products contain Lead.

8 17. Defendants both know and intend that individuals will wear, use, touch,
9 and otherwise handle the Products, thus exposing them to Lead.

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

14 19. More than sixty days before naming each Defendant in this suit, Plaintiff
15 provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney General, the
16 District Attorneys of every county in California, the City Attorneys of every California city with
17 a population greater than 750,000, and to each of the named Defendants. Each of the Notices
18 contained the information required by Health & Safety Code §25249.7(d) and 22 CCR
19 §12903(b).

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

1 Notice. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3102, the
2 Certificate served on the Attorney General included factual information – provided on a
3 confidential basis – sufficient to establish the basis for the Certificates, including the identity of
4 the person(s) consulted by Plaintiff’s counsel and the facts, studies or other data reviewed by
5 such persons.

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

10 22. Proposition 65 provides for injunctive relief and civil penalties not to
11 exceed \$2,500 per day for each violation of Proposition 65.

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

14 23. Plaintiff realleges and incorporates by reference as if specifically set forth
15 herein Paragraphs 1 through 22 inclusive.

16 24. By placing the Products into the stream of commerce, Defendants are
17 persons in the course of doing business within the meaning of Health & Safety Code §25249.11
18 and persons within the meaning of Business & Professions Code §17201.

19 25. Defendants know that through the reasonably foreseeable use of the
20 Products, users of the Products are exposed to Lead. Defendants intend that the Products be
21 worn by children and adults in such a manner that they will be exposed to Lead contained in the
22 Products.

23 26. Defendants have failed, and continue to fail, to provide clear and
24 reasonable warning regarding the carcinogenicity and reproductive toxicity of Lead to users of
25 the Products.

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

28 28. By committing the acts alleged above, Defendants have at all times

1 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
2 individuals to Lead without first giving clear and reasonable warning to such individuals
3 regarding the carcinogenicity and reproductive toxicity of Lead.

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

5 **PRAYER FOR RELIEF**

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

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

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

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

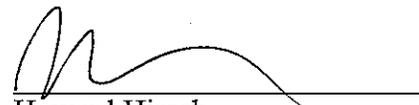
17 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other
18 applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

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

21
22 Dated: November 13, 2007

Respectfully submitted,

23 LEXINGTON LAW GROUP, LLP

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25 

26 Howard Hirsch
27 Attorneys for Plaintiff
28 CENTER FOR ENVIRONMENTAL
HEALTH