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Center for Environmental Health

**UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**CENTER FOR ENVIRONMENTAL HEALTH
a California non-profit corporation**

CASE NO. C 08-03250 WHA

Plaintiff,

v.

**FIRST AMENDED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF
AND CIVIL PENALTIES**

EASTERN AMERICA TRIO PRODUCTS, INC.

and DOES I-X.

Defendants.

_____/

Plaintiff, Center for Environmental Health (“CEH”) hereby alleges the following in this

Amended Complaint:

I

INTRODUCTION

1. CEH brings this action as a private attorney general on behalf of the People of the State of California and in the public interest pursuant to Health Safety Code section 25249.7 (d). Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety

Code Section 25249.5 et seq) also known as “Proposition 65,” this complaint seeks injunctive and declaratory relief and civil penalties based on Eastern America Trio Products, Inc.’s (“Eastern America Trio Products”) failure to warn users of the company’s audio cord cable, modular extension telephone cord and modular telephone coil cord that they are exposed to lead by the handling of these products. Lead is a chemical known to the State of California to cause developmental toxicity, male and female reproductive toxicity and cancer. Pursuant to Proposition 65, businesses with ten or more employees must provide persons with a “clear and reasonable warning” prior to exposing them to chemicals listed by the State to cause reproductive toxicity and cancer in excess of threshold levels.

II

PARTIES

2. Plaintiff CEH is a citizen of the State of California, being a non-profit California corporation with its principal place of business at 2201 Broadway, Oakland, California 94612. CEH is dedicated to environmental protection and enhancement. One of CEH’s objectives is to prevent and reduce toxic hazards to human health and the environment. Through CEH’s activities, numerous carcinogenic and reproductive chemicals listed pursuant to Proposition 65 that have been present in consumer products or emitted into the air have been eliminated.

3. Eastern America Trio Products is a corporation licensed to do business in the State of New York. The company operates a facility in College Point, New York where the products complained of in this Complaint are manufactured and/or distributed. Defendant is a citizen of the State of New York, being a corporation organized under the laws of the State of New York and having its principal place of business at 12828 25th Ave., College Point, New York 11356.

4. Defendants DOES I-X, are named herein under fictitious names, as their true names and capacities are unknown to Plaintiff. CEH is informed and believes, and thereon alleges, that each of said DOES is responsible, in some actionable manner, for the events and happenings hereinafter referred to, either through said Defendant's conduct, or through the conduct of its agents, servants or employees, or in some other manner, causing the harms alleged by Plaintiff in this complaint. When said true names and capacities of DOES are ascertained, CEH will seek leave to amend this complaint to set forth the same.

III

JURISDICTION AND VENUE

5. This case was originally filed in the Alameda County Superior Court and was removed to this Court by Defendant. This action is one of which the United States District Courts are given original jurisdiction under 28 U.S.C. § 1332 by reason of the diversity of citizenship of the parties. The amount in controversy in the action, exclusive of interest and costs, exceeds \$75,000.00 as required by 28 U.S.C. § 1332 (a).

6. CEH has performed any and all conditions precedent to the filing of a legal action pursuant to Proposition 65 by serving by mail a Notice of Violation, dated October 1, 2007 to the Attorney General of the State of California, the State's district attorney's and the appropriate city attorney's throughout the State and by mailing the Notice of Violation on December 7, 2007 to Defendant. A true and correct copy of this Notice is attached herein as Exhibit A. Furthermore, on October 1, 2008, CEH served by mail a second Notice of Violation to the above governmental enforcers as well as to Defendant. A true and correct copy of this Notice is attached herein as Exhibit B. More than 60 days have passed since CEH mailed its Notice and no public enforcement entity has filed a complaint in this case.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) as this is a civil action wherein jurisdiction is not founded solely on diversity of citizenship and this judicial district is a district where a substantial part of the events or omissions giving rise to the claim occurred. Products in violation of Proposition 65 were sold in Oakland, California. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391 (c), as Defendant is a corporation that shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.

IV

STATUTORY BACKGROUND

A. PROPOSITION 65

8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as “Proposition 65” by an overwhelming majority vote of the people in November of 1986.

9. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

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, except as provided in Section 25249.10.

10. Implementing regulations for Proposition 65 provide that warnings are required for consumer product exposures. A “consumer product exposure is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” 22 CCR section 12601 (b).

11. Whenever a clear and reasonable warning is required under Health & Safety Code section 25249.6, the “method employed to transmit the warning must be reasonably calculated considering

the alternative methods available under the circumstances, to make the warning message available prior to exposure.” The warning requirement may be satisfied by a warning that appears on a product’s label or other labeling, shelf labeling, signs, a system of signs, public advertising identifying the system and toll-free information services, or any other, system, that provides clear and reasonable warnings. 22 CCR section 12601 (b) (1) (A)- (C).

12. Proposition 65 establishes a procedure by which the State is to develop a list of chemicals “known to the State to cause cancer or reproductive toxicity.” Eastern America Trio Products had a duty to provide clear and reasonable warning to those persons exposed to lead 12-months after the chemical was published on the State list. Lead was listed as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead and lead compounds were also listed pursuant to Proposition 65 as carcinogens on October 1, 1992.

13. Proposition 65 may be enforced by any person in the public interest who provides notice sixty days before filing suit to both the violator and designated law enforcement officials. The failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed pursuant to Health and Safety Code section 25249.7 (c).

14. Proposition 65 provides for injunctive relief and a civil fine of up to \$2,500 per day for each violation. Health and Safety Code section 25249.7(a) (b). Each individual exposure without warning is a separate violation.

V

STATEMENT OF FACTS

15. Defendant Eastern America Trio Products manufactures and/or distributes from its New York facility products that are sold in California that are exposing people to lead. These products include: (1) Trisonic audio cord cable (TS-1206N); (2) Trisonic modular extension

telephone cord (TS-815); and (3) Trisonic modular telephone coil cord (TS-607). These products are set forth in Exhibit A. Further products set forth in Exhibit B that are exposing person to lead include: (1) Trisonic 6 Foot Heavy Duty Stereo Cable (TS-1618G); (2) Trisonic 15 Foot Modular Coil Cord (TS-615); (3) Trisonic 15 Foot RG-59U Coaxial Cable (TS-FF-15BLK); (4) Trisonic 12 Foot Heavy Duty Stereo Cable (TS-1613G12); (5) Trisonic 6 Foot 2 RCA Plugs (TS-1306G); (6) Trisonic 6 Foot Coaxial Cable RG 59U (TS-FF-06BLK); (7) Trisonic 3 Foot RG-59U (TS-FF-03BLK) ; and (8) Trisonic 15 Foot Modular Extension Cord (TS-815).

16. Lead has many known health effects. Lead has been shown to cross the placenta in pregnant women and adversely affect the developing fetus. Fetuses and children under the age of six are those at greatest risk of the health effects associated with lead exposure. Children are most vulnerable because they absorb lead more easily than adults and their brain and central nervous system is developing rapidly. Lead is a powerful neurotoxin that interferes with the development of these systems as well as the kidney and blood-forming organs. Even low levels of lead exposure can result in IQ deficits, learning disabilities, behavioral problems, stunted or slowed growth and impaired hearing. Symptoms of long-term exposure to lower lead levels may cause appetite loss, abdominal pain, constipation, fatigue, sleeplessness, irritability and headache. Short-term exposure to high levels of lead can cause vomiting, diarrhea, convulsion, coma or even death.

Today, there is a widespread recognition that there is no such thing as a “safe” level of lead exposure.

17. Defendant Eastern America Trio Products has knowingly and intentionally exposed numerous persons to lead, without providing a Proposition 65 warning. The company has at all times relevant hereto been aware that its audio cord cable, modular extension telephone cord and modular telephone coil cord products contain lead and that exposures occur due to dermal exposure

and hand to mouth ingestion of the chemical. Eastern America Trio Products markets its products with knowledge that exposures to lead will occur.

FIRST CAUSE OF ACTION

(Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear and Reasonable Warning under Proposition 65)

18. CEH refers to paragraphs 1-17, inclusive, and incorporates them herein by this reference.

19. Eastern America Trio Products operates a business, which employs ten or more persons.

20. By committing the acts alleged above, Eastern America Trio Products has, in the course of doing business, knowingly and intentionally exposed individuals to a chemical known to the State of California to cause reproductive toxicity and cancer without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

21. Said violations render Eastern America Trio Products liable for civil fines up to \$2,500 (two thousand, five hundred dollars) per day, for each such violation.

22. Eastern America Trio Products' continued violation of the law will irreparably harm CEH and the public interest in whose behalf Plaintiff brings this action, for which there is no adequate remedy at law.

SECOND CAUSE OF ACTION

(Declaratory Relief)

23. CEH refers to paragraphs 1-22, inclusive, and incorporates them herein by this reference.

24. There exists an actual controversy relating to the legal rights and duties of the parties, within the meaning of Code of Civil Procedure section 1060, between Plaintiff and Eastern America Trio Products concerning:

a) whether Eastern America Trio Products has exposed individuals to a chemical known to the State of California to cause reproductive toxicity and cancer without providing clear and reasonable warning.

VI

PRAYER

WHEREFORE, CEH prays for relief against Eastern America Trio Products as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to proof;
2. On the First Cause of Action, and pursuant to Health and Safety Code section 25249.7 (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders, prohibiting Eastern America Trio Products from exposing persons to lead without providing clear and reasonable warnings;
3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring:
 - a. that Eastern America Trio Products has exposed individuals to a chemical known to the State of California to cause reproductive toxicity and cancer without providing clear and reasonable warning; and
4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the substantial benefit theory;
5. For costs of suit herein; and

6. For such other relief as the Court may deem just and proper.

Dated: December 5, 2008

By

Michael Freund
Attorney for Center for Environmental Health