

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JUN 04 2008

GORDON PARK-LI, Clerk

BY: DEBORAH STEPPE  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

NOV 07 2008 - 9:00 AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

**CGC-08-475982**

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

Plaintiff, )

v. )

SASSAFRAS ENTERPRISES, INC.; and )  
Defendant DOES 1 through 200, inclusive, )

Defendants. )

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6 *et seq.*

(Other)

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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 knowledge,  
3 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 and 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' children's soft vinyl bags, including but  
10 not limited to lunch boxes, lunch bags, coolers, and backpacks that contain Lead (the  
11 "Products"). Consumers, including children, are exposed to Lead when they use the Products.

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

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

#### 22 **PARTIES**

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
24 non-profit corporation dedicated to protecting the public from environmental health hazards and  
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the  
26 State of California. CEH is a "person" within the meaning of Health & Safety Code  
27 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &  
28 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy





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

11           17.     There is no safe level of exposure to Lead and even minute amounts of  
12 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard,  
13 DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the effect of  
14 childhood Lead exposure declared that even the smallest detectable amount of blood Lead levels  
15 in children can mean the difference between an A or B grade in school. Lanphear, BP, Dietrich,  
16 K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents";  
17 *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into  
18 adulthood and found a sevenfold increase in the risk for developing a reading disability among  
19 children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger,  
20 D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in  
21 Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

22           18.     Defendants' Products contain sufficient quantities of Lead such that  
23 consumers, including children, who handle the Products and handle and ingest items stored  
24 inside the Products are exposed to Lead through the average use of the Products. The route of  
25 exposure for the violations is direct ingestion when consumers, including children, place items  
26 that have been stored in the Products in their mouths; ingestion via hand to mouth contact after  
27 consumers, including children, touch or handle the Products or items that have been stored in the  
28 products; and dermal absorption directly through the skin when consumers, including children,

1 touch, handle or wear the Products or items that have been stored in the Products.

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

6 20. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
7 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
8 the District Attorneys of every county in California, the City Attorneys of every California city  
9 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
10 Health & Safety Code §25249.7(d) and 22 CCR §12903(b), each of the Notices included the  
11 following information: (1) the name and address of the violators; (2) the statute violated; (3) the  
12 time period during which violations occurred; (4) specific descriptions of the violations,  
13 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of  
14 Products sold and used in violation of Proposition 65; and (5) the name of the specific  
15 Proposition 65-listed chemical (Lead) that is the subject of the violations described in each of the  
16 Notices.

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



1 herein Paragraphs 1 through 28 inclusive.

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

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

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

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

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

16 Wherefore, CEH prays judgment against the Defendants, as set forth hereafter.

17 **PRAYER FOR RELIEF**

18 Wherefore, CEH prays for judgment against Defendants as follows:

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

22 2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
23 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
24 California with sufficient quantities of Lead such that users of the Products are exposed to a  
25 "significant amount" of Lead under Proposition 65 without providing clear and reasonable  
26 warnings, as CEH shall specify in further application to the Court;

27 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order  
28 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of

1 Products sold by Defendants, as CEH shall specify in further application to the Court;

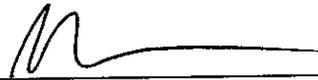
2 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other  
3 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

6 Dated: June 4, 2008

Respectfully submitted,

LEXINGTON LAW GROUP, LLP



10 Howard Hirsch  
11 Attorneys for Plaintiff  
12 CENTER FOR ENVIRONMENTAL  
13 HEALTH

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