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ENDORSED
FILED
ALAMEDA COUNTY

JUL 18 2008

CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWNIE
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

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

12 Plaintiff,)

13 v.)

14 ALEXX, INC.; BUILD-A-BEAR WORKSHOP,)
15 INC.; THE FAITH COLLECTION, INC.;)
16 DRAKE DESIGN; PURE & SIMPLE)
17 SOLUTIONS, LLP; SAN FRANCISCO)
18 BASEBALL ASSOCIATES, L.P.; and)
19 Defendant DOES 1 through 200, inclusive,)

20 Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

Case No. RG 08399102

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' keychains and charms (the "Products").
10 Consumers, including children, are exposed to Lead when they use the Products.

11 2. Under California's Proposition 65, Health and Safety Code §25249.5 *et*
12 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
13 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
14 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
15 introduce keychains and charms contaminated with significant quantities of Lead directly into the
16 California marketplace, exposing consumers of their Products, many of whom are children, to
17 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 non-profit
24 corporation dedicated to protecting the public from environmental health hazards and toxic
25 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
26 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and
27 brings this enforcement action in the public interest pursuant to Health & Safety Code
28 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has

1 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
2 resulted in significant public benefit, including reformulation of toxic products to make them
3 safer and the provision of clear and reasonable warnings on hundreds of products sold throughout
4 California. CEH also provides information to Californians about the health risks associated with
5 exposure to hazardous substances, where manufacturers and other responsible parties fail to do
6 so.

7 5. Defendant Alexx, Inc. (“Alexx”) is a person in the course of doing
8 business within the meaning of Health & Safety Code §25249.11. Alexx manufactures,
9 distributes and/or sells the Products for sale and use in California.

10 6. Defendant Build-a-Bear Workshop, Inc. (“Build-a-Bear”) is a person in
11 the course of doing business within the meaning of Health & Safety Code §25249.11. Build-a-
12 Bear manufactures, distributes and/or sells the Products for sale and use in California.

13 7. Defendant The Faith Collection, Inc. (“TFC”) is a person in the course of
14 doing business within the meaning of Health & Safety Code §25249.11. TFC manufactures,
15 distributes and/or sells the Products for sale and use in California.

16 8. Defendant Drake Design is a person in the course of doing business within
17 the meaning of Health & Safety Code §25249.11. Drake Design manufactures, distributes and/or
18 sells the Products for sale and use in California.

19 9. Defendant Pure & Simple Solutions, LLP (“Pure & Simple”) is a person in
20 the course of doing business within the meaning of Health & Safety Code §25249.11. Pure &
21 Simple manufactures, distributes and/or sells the Products for sale and use in California.

22 10. Defendant San Francisco Baseball Associates, L.P. (“SFBA”) is a person
23 in the course of doing business within the meaning of Health & Safety Code §25249.11. SFBA
24 manufactures, distributes and/or sells the Products for sale and use in California.

25 11. DOES 1-200 are each a person in the course of doing business within the
26 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute
27 and/or sell the Products for sale or use in California.

28 12. The true names of DOES 1 through 200 are unknown to CEH at this time.

1 When their identities are ascertained, the complaint shall be amended to reflect their true names.

2 13. The defendants identified in paragraphs 5 through 10, inclusive, and
3 DOES 1 through 200, are collectively referred to herein as “Defendants.”

4 **JURISDICTION AND VENUE**

5 14. The Court has jurisdiction over this action pursuant to Health & Safety
6 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
7 California Superior Court has jurisdiction over this action pursuant to California Constitution
8 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except
9 those given by statute to other trial courts.” The statutes under which this action is brought do
10 not grant jurisdiction to any other trial court.

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

17 16. Venue is proper in the Alameda Superior Court because one or more of the
18 violations arise in the County of Alameda.

19 **BACKGROUND FACTS**

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

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

28 No person in the course of doing business shall knowingly and
intentionally expose any individual to a chemical known to the

1 state to cause cancer or reproductive toxicity without first giving
2 clear and reasonable warning to such individual. . .

3 19. On February 27, 1987, the State of California officially listed Lead as a
4 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
5 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to
6 the developing fetus, "female reproductive toxicity," which means harm to the female
7 reproductive system, and "male reproductive toxicity," which means harm to the male
8 reproductive system. 27 California Code of Regulations ("CCR") §12000(c). On February 27,
9 1988, one year after it was listed as a chemical known to cause reproductive toxicity, Lead
10 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
11 under Proposition 65. 27 CCR §12000(c); Health & Safety Code §25249.10(b).

12 20. On October 1, 1992, the State of California officially listed lead and lead
13 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
14 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
15 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 CCR
16 §12000(c); Health & Safety Code §25249.10(b).

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

27 22. There is no safe level of exposure to Lead and even minute amounts of
28 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM, Svendgaard,

1 DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the effect of
2 childhood Lead exposure declared that even the smallest detectable amount of blood Lead levels
3 in children can mean the difference between an A or B grade in school. Lanphear, BP, Dietrich,
4 K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and Adolescents";
5 *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed children into
6 adulthood and found a sevenfold increase in the risk for developing a reading disability among
7 children exposed to sufficient levels of Lead as toddlers. Needleman, HL, Schell, A, Bellinger,
8 D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low Doses of Lead in
9 Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*; 322:83-88, 1990.

10 23. Defendants' Products contain sufficient quantities of Lead such that
11 consumers, including children, are exposed to Lead through the average use of the Products. The
12 route of exposure for the violations is direct ingestion when consumers, including children, place
13 the Products in their mouths; ingestion via hand to mouth contact after consumers, including
14 children, touch or handle the Products; and dermal absorption directly through the skin when
15 consumers, including children, touch or handle the Products.

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

20 25. More than sixty days prior to naming each Defendant in this lawsuit, CEH
21 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
22 the District Attorneys of every county in California, the City Attorneys of every California city
23 with a population greater than 750,000 and to each of the named Defendants. In compliance with
24 Health & Safety Code §25249.7(d) and 27 CCR §12903(b), each of the Notices included the
25 following information: (1) the name and address of the violators; (2) the statute violated; (3) the
26 time period during which violations occurred; (4) specific descriptions of the violations,
27 including (a) the routes of exposure to Lead from the Products and (b) the specific type of
28 Product, with a specific non-exclusive example of a Product that is sold and used in violation of

1 Proposition 65 for each named Defendant; and (5) the name of the specific Proposition 65-listed
2 chemical (Lead) that is the subject of the violation described in each of the Notices.

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

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

20 28. Defendants both know and intend that individuals, including children, will
21 handle the Products and handle and ingest items stored inside the Products, thus exposing them
22 to Lead.

23 29. Nevertheless, Defendants continue to expose consumers, including
24 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
25 reproductive hazards of Lead.

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

28 31. Any person “violating or threatening to violate” Proposition 65 may be

1 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to
2 violate” is defined to mean “to create a condition in which there is a substantial probability that a
3 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil
4 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

5 **FIRST CAUSE OF ACTION**

6 **(Violations of the Health & Safety Code §25249.6)**

7 32. Plaintiff realleges and incorporates by reference as if specifically set forth
8 herein Paragraphs 1 through 31 inclusive.

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

11 34. Defendants know that average use of the Products will expose users of the
12 Products to Lead. Defendants intend that the Products be used in a manner that results in users
13 of the Products being exposed to Lead contained in the Products.

14 35. The Defendants have failed, and continue to fail, to provide clear and
15 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
16 the Products.

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

19 37. By committing the acts alleged above, the Defendants have at all times
20 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
21 individuals to Lead without first giving clear and reasonable warnings to such individuals
22 regarding the carcinogenicity and reproductive toxicity of Lead.

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

24 **PRAYER FOR RELIEF**

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

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

1 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
2 preliminarily and permanently enjoin Defendants from offering the Products for sale in
3 California with sufficient quantities of Lead such that users of the Products are exposed to a
4 “significant amount” of Lead under Proposition 65 without providing clear and reasonable
5 warnings, as Plaintiff shall specify in further application to the Court;

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

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

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

13 Dated: July 18, 2008

Respectfully submitted,
LEXINGTON LAW GROUP, LLP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH