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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11

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

13 Plaintiff,)

14 v.)

15)
16 TARGET CORPORATION; and Defendant)
DOES 1 through 200, inclusive,)

17)
18 Defendants.)
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Case No. CIV 086363

**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 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 or other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of Defendants' faux leather furniture (the "Products").
10 Consumers, including children, are exposed to Lead when they use the Products.

11 2. Under California's Proposition 65, which is codified at Health and Safety
12 Code § 25249.5, *et seq.*, it is unlawful for businesses to knowingly and intentionally expose
13 individuals in California to chemicals known to the State to cause cancer, birth defects or other
14 reproductive harm without providing clear and reasonable warnings to individuals prior to their
15 exposure. Defendants introduce Products contaminated with significant quantities of Lead into
16 the 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
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 & Safety
28 Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group

1 that has prosecuted a large number of Proposition 65 cases in the public interest. These cases
2 have resulted in significant public benefit, including the reformulation of thousands of products
3 to remove toxic chemicals. CEH also provides information to Californians about the health risks
4 associated with exposure to hazardous substances, where manufacturers and other responsible
5 parties fail to do so.

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

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

12 7. The true names of DOES 1 through 200 are unknown to CEH at this time.
13 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

14 8. The defendant identified in paragraph 5 and DOES 1 through 200 are
15 collectively referred to herein as “Defendants.”

16 **JURISDICTION AND VENUE**

17 9. The Court has jurisdiction over this action pursuant to Health & Safety
18 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
19 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
20 to other trial courts.

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

27 11. Venue is proper in the Marin Superior Court because one or more of the
28 violations arise in the County of Marin.

1 **BACKGROUND FACTS**

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

5 13. To effectuate this goal, Proposition 65 prohibits exposing people to
6 chemicals listed by the State of California as known to cause cancer, birth defects or other
7 reproductive harm above certain levels without a “clear and reasonable warning” unless the
8 business responsible for the exposure can prove that it fits within a statutory exemption. Health
9 & Safety Code § 25249.6 states, in pertinent part:

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

14 14. On February 27, 1987, the State of California officially listed lead as a
15 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
16 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
17 the developing fetus, “female reproductive toxicity,” which means harm to the female
18 reproductive system, and “male reproductive toxicity,” which means harm to the male
19 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,
20 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
21 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
22 under Proposition 65. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

23 15. On October 1, 1992, the State of California officially listed lead and lead
24 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
25 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
26 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §
27 27001(c); Health & Safety Code § 25249.10(b).

28 16. Young children are especially susceptible to the toxic effects of Lead.
Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from

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

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

21 18. Defendants' Products contain sufficient quantities of Lead such that
22 consumers, including children, who touch or handle the Products are exposed to Lead through
23 the average use of the Products. The routes of exposure for the violation include ingestion via
24 hand to mouth contact after consumers, including children, touch or handle the Products and
25 dermal absorption directly through the skin when consumers, including children, touch or handle
26 the Products.

27 19. Any person acting in the public interest has standing to enforce violations
28 of Proposition 65 provided that such person has supplied the requisite public enforcers with a

1 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
2 action within such time. Health & Safety Code § 25249.7(d).

3 20. More than sixty days prior to naming each Defendant in this lawsuit, CEH
4 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
5 the District Attorneys of every county in California, the City Attorneys of every California city
6 with a population greater than 750,000 and to each of the named Defendants. In compliance with
7 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each of the Notices included the
8 following information: (1) the name and address of the violators; (2) the statute violated; (3) the
9 time period during which violations occurred; (4) specific descriptions of the violations,
10 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
11 Products sold and used in violation of Proposition 65; and (5) the name of the specific
12 Proposition 65-listed chemical (Lead) that is the subject of the violations described in each of the
13 Notices.

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

27 22. None of the public prosecutors with the authority to prosecute violations
28 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the

1 Defendants named herein under Health & Safety Code § 25249.5, *et seq.*, based on the claims
2 asserted in the Notice.

3 23. Defendants both know and intend that individuals, including children, will
4 handle the Products, thus exposing them to Lead.

5 24. The Products are often made from polyvinyl chloride (“PVC”). The
6 association between PVC and Lead exposure has been widely discussed in the media in recent
7 years, with particular attention given to products made from PVC that are marketed to children.
8 Many of the Defendants’ Products are made for children.

9 25. Defendants have been informed of the Lead in their Products by the 60-
10 Day Notice of Violation served on them by CEH.

11 26. Nevertheless, Defendants continue to expose consumers, including
12 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
13 reproductive hazards of Lead.

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

16 28. Any person “violating or threatening to violate” Proposition 65 may be
17 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to
18 violate” is defined to mean “to create a condition in which there is a substantial probability that a
19 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
20 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

21 **FIRST CAUSE OF ACTION**

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

23 29. CEH realleges and incorporates by reference as if specifically set forth
24 herein Paragraphs 1 through 28, inclusive.

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

27 31. Defendants know that average use of the Products will expose users of the
28 Products to Lead. Defendants intend that the Products be used in a manner that results in users

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Respectfully submitted,
LEXINGTON LAW GROUP, LLP



Lisa Burger
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH