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SAN FRANCISCO COUNTY
SUPERIOR COURT

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GORDON P. ... CLERK

CASE MANAGEMENT CONFERENCE SET

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DEPARTMENT 212

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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

Case No. **CGC-09-489839**

13 Plaintiff,)

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

14 v.)

Health & Safety Code § 25249.6, *et seq.*

15
16 DOLLAR EMPIRE, LLC and Defendant DOES)
1 through 200, inclusive,)

(Other)

17 Defendants.)
18
19

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' CD and DVD wallets and organizers (the
10 "Products"). Consumers, including children and pregnant women, are exposed to Lead when
11 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 and pregnant
18 women, to Lead.

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

23 PARTIES

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

1 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
2 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
3 cases have resulted in significant public benefit, including reformulation of thousands of
4 products to remove toxic chemicals and to make them safer. CEH also provides information to
5 Californians about the health risks associated with exposure to hazardous substances, where
6 manufacturers and other responsible parties fail to do so.

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

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

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

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

17 **JURISDICTION AND VENUE**

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

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

28 11. Venue is proper in the San Francisco Superior Court because one or more

1 of the violations arise in the County of San Francisco.

2 **BACKGROUND FACTS**

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

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

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

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

24 15. On October 1, 1992, the State of California officially listed lead and lead
25 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
26 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
27 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
28 § 27001(c); Health & Safety Code § 25249.10(b).

16. Young children are especially susceptible to the toxic effects of Lead.

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

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

22 18. Lead exposures for pregnant women are also of particular concern in light
23 of evidence that even short term lead exposures *in utero* may have long-term harmful effects.
24 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
25 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced
26 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health*
27 *Perspectives*, 114:5, 2006.

28 19. Defendants' Products contain sufficient quantities of Lead such that

1 consumers who handle the Products, including children and pregnant women, are exposed to
2 Lead through the average use of the Products. The routes of exposure for the violations include
3 direct ingestion when consumers place the Products in their mouths, ingestion via hand-to-mouth
4 contact after consumers touch or handle the Products or items that have been stored in the
5 Products, and dermal absorption directly through the skin when consumers touch or handle the
6 Products.

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

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

22 22. CEH also sent a Certificate of Merit for each of the Notices to the
23 California Attorney General, the District Attorneys of every county in California, the City
24 Attorneys of every California city with a population greater than 750,000 and to the named
25 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each
26 of the Certificates certified that CEH's counsel: (1) has consulted with one or more persons with
27 relevant and appropriate experience or expertise who reviewed facts, studies or other data
28 regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information

1 obtained through such consultations, believes that there is a reasonable and meritorious case for a
2 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with
3 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each of the Certificates served on the
4 Attorney General included factual information – provided on a confidential basis – sufficient to
5 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH’s
6 counsel and the facts, studies or other data reviewed by such persons.

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

11 24. Defendants both know and intend that individuals, including children and
12 pregnant women, will touch or handle the Products, thus exposing them to Lead.

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

15 26. Nevertheless, Defendants continue to expose consumers, including
16 children and pregnant women, to Lead without prior clear and reasonable warnings regarding the
17 carcinogenic and/or reproductive hazards of Lead.

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

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

25 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

16 **PRAYER FOR RELIEF**

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

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

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

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

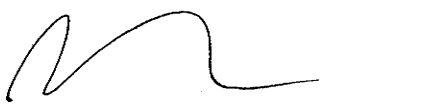
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4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: June 25, 2009

Respectfully submitted,
LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH