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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CENTER FOR ENVIRONMENTAL HEALTH

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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,)
13)
14 Plaintiff,)
15)
16 v.)
17 CREATIVE DESIGN, LTD. and Defendant)
DOES 1 through 200, inclusive,)
18)
19 Defendants.)

Case No. **CBC-09-491452**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*
(Other)

CASE MANAGEMENT CONFERENCE SET

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DEPARTMENT 212

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' decorative ornaments (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 Products contaminated with significant quantities of Lead into the California
16 marketplace, exposing consumers of their Products, many of whom are children, to Lead.

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

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
23 non-profit corporation dedicated to protecting the public from environmental health hazards and
24 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
25 State of California. CEH is a "person" within the meaning of Health & Safety Code
26 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
27 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
28 group that has prosecuted a large number of Proposition 65 cases in the public interest. These

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 handle the Products are exposed to Lead through the average
23 use of the Products. Lead is contained in both the metallic and non-metallic parts of the
24 Products. For example, the Products use uncoated casing or solder that contain Lead to hold
25 metal and glass parts of the ornaments together. The routes of exposure for the violations
26 include direct ingestion when consumers place the Products in their mouths, ingestion via hand
27 to mouth contact after consumers touch or handle the Products, and dermal absorption directly
28 through the skin when consumers touch or handle the Products.

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

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

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

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

5 23. Under Proposition 65, an exposure is “knowing” where the party
6 responsible for such exposure has:

7 knowledge of the fact that a discharge of, release of, or exposure to
8 a chemical listed pursuant to Health and Safety Code § 25249.8(a)
9 of the Act is occurring. No knowledge that the discharge, release
 or exposure is unlawful is required.

10 27 C.C.R. § 25102(n).

11 24. Defendants both know and intend that individuals, including children, will
12 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, to Lead without prior clear and reasonable warnings regarding the carcinogenic and/or
17 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. 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, 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 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;

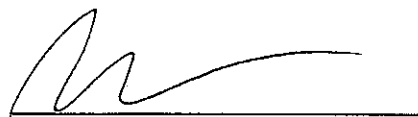
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4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: August 13, 2009

Respectfully submitted,
LEXINGTON LAW GROUP


Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH