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ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 18 2009

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

P. NATT

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

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

13 Plaintiff,)

14 v.)

15)
16 CLAIRES BOUTIQUES, INC.; and ~~Defendant~~)
DOES 1 through 200, inclusive,)

17)
18 Defendants.)

CGC-09-492696
Case No. _____

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

Health & Safety Code § 25249.6, et seq.

(Other)

CASE MANAGEMENT CONFERENCE SET

FEB 19 2010

DEPARTMENT 206

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' keychains (the "Products"). Consumers,
10 including children and pregnant women, 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 and pregnant
17 women, to Lead.

18 3. Despite the fact that Defendants expose children, pregnant women and
19 other consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
20 reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the
21 warning provision 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 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
2 cases have resulted in significant public benefit, including reformulation of thousands of
3 products to remove toxic chemicals and to make them safer. CEH also provides information to
4 Californians about the health risks associated with exposure to hazardous substances, where
5 manufacturers and other responsible parties fail to do so.

6 5. Defendant CLAIRE'S BOUTIQUES, INC. ("Claire's") is a person in the
7 course of doing business within the meaning of Health & Safety Code § 25249.11. Claire's
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 San Francisco Superior Court because one or more
28 of the violations arise in the County of San Francisco.

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
clear and reasonable warning to such individual. . .

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

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

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

27 19. Defendants' Products contain sufficient quantities of Lead such that
28 consumers, including children and pregnant women, who handle the Products are exposed to

1 Lead through the average use of the Products. The route of exposure for the violations is direct
2 ingestion when consumers place the Products in their mouths, ingestion via hand-to-mouth
3 contact after consumers touch or handle the Products, and dermal absorption directly through the
4 skin when consumers touch or handle the Products.

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

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

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

1 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each of the Certificates served on the
2 Attorney General included factual information – provided on a confidential basis – sufficient to
3 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH’s
4 counsel and the facts, studies or other data reviewed by such persons.

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

9 24. Under Proposition 65, an exposure is “knowing” where the party
10 responsible for such exposure has:

11 knowledge of the fact that a[n] . . . exposure to a chemical listed
12 pursuant to [Health and Safety Code § 25249.8(a)] is occurring.
13 No knowledge that the . . . exposure is unlawful is required.

14 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
16 § 12201).

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

19 26. Defendants have been informed of the Lead in their Products by the 60-
20 Day Notice of Violation served on them by CEH.

21 27. Nevertheless, Defendants continue to expose consumers, including
22 children and pregnant women, to Lead without prior clear and reasonable warnings regarding the
23 carcinogenic and/or reproductive hazards of Lead.

24 28. CEH has engaged in good-faith efforts to resolve the claims alleged herein
25 prior to filing this complaint.

26 29. Any person “violating or threatening to violate” Proposition 65 may be
27 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to
28 violate” is defined to mean “to create a condition in which there is a substantial probability that a

1 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
2 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

3 **FIRST CAUSE OF ACTION**

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

5 30. CEH realleges and incorporates by reference as if specifically set forth
6 herein Paragraphs 1 through 29, inclusive.

7 31. By placing the Products into the stream of commerce, each Defendant is a
8 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

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

12 33. Defendants have failed, and continue to fail, to provide clear and
13 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
14 the Products.

15 34. Lead is a chemical listed by the State of California as known to cause
16 cancer, birth defects and other reproductive harm.

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

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

22 **PRAYER FOR RELIEF**

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

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

27 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
28 preliminarily and permanently enjoin Defendants from offering the Products for sale in

1 California with sufficient quantities of Lead such that users of the Products are exposed to a
2 "significant amount" of Lead under Proposition 65 without providing clear and reasonable
3 warnings, as CEH shall specify in further application to the Court;

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

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

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

11
12 Dated: September 18, 2009

Respectfully submitted,

13 LEXINGTON LAW GROUP

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16 Howard Hirsch
17 Attorneys for Plaintiff
18 CENTER FOR ENVIRONMENTAL
19 HEALTH
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