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

11 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
12)
13 Plaintiff,)
14 v.)
15 STAPLES, INC.; STAPLES THE OFFICE)
SUPERSTORE, LLC; and Defendant DOES 1)
16 through 200, inclusive,)
17 Defendants.)

Case No. **CGC-09-493397**
COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES
Health & Safety Code §25249.6, *et seq.*
(Other)
CASE MANAGEMENT CONFERENCE SET
MAR 19 2010 9⁰⁰ AM
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 and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and/or use of Defendants' vinyl pencil pouches (the "Products").
10 Consumers, including children, are exposed to Lead when they use, touch or handle 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 people who
18 come into contact with the Products to Lead, Defendants provide no warnings whatsoever about
19 the carcinogenic or reproductive hazards associated with these Lead exposures. Defendants'
20 conduct thus violates the warning provision 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 play and substantial justice.

2 12. Venue is proper in the San Francisco Superior Court because one or more
3 of the violations arise in the County of San Francisco.

4 **BACKGROUND FACTS**

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

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

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

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

25 16. On October 1, 1992, the State of California officially listed lead and lead
26 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
27 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
28 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.

1 §27001(c); Health & Safety Code §25249.10(b).

2 17. Defendants' Products contain sufficient quantities of Lead such that
3 consumers, including children, who use, touch and/or handle the Products are exposed to Lead
4 through the average use of the Products. The route of exposure for the violations is direct
5 ingestion when consumers place the Products or items that have been stored in the Products in
6 their mouths; ingestion via hand-to-mouth contact after consumers use, touch and/or handle the
7 Products or items that have been stored in the Products; and dermal absorption directly through
8 the skin when consumers use, touch and/or handle the Products or items that have been stored in
9 the Products.

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

20 19. There is no safe level of exposure to Lead and even minute amounts of
21 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,
22 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
23 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
24 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
25 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
26 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
27 children into adulthood and found a sevenfold increase in the risk for developing a reading
28 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,

1 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low
2 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*
3 322:83-88, 1990.

4 20. Lead is found in the vinyl fabric and/or material from which the Products
5 are made.

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

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

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

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

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

10 25. Defendants both know and intend that individuals, including children, will
11 use, touch and/or handle the Products, thus exposing them to Lead.

12 26. Under Proposition 65, an exposure is “knowing” where the party
13 responsible for such exposure has:

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

17 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
18 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
19 §12201).

20 27. No clear and reasonable warning is provided with the Products regarding
21 the carcinogenic or reproductive hazards of Lead.

22 28. Defendants have been informed of the Lead in their Products by the 60-
23 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

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

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

 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. CEH 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, each Defendant is a
10 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

11 34. Lead is a chemical listed by the State of California as known to cause
12 cancer and birth defects or other reproductive harm.

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

16 36. Defendants have failed, and continue to fail, to provide prior clear and
17 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
18 the Products.

19 37. By committing the acts alleged above, 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, CEH prays judgment against the Defendants, as set forth hereafter.

24 **PRAYER FOR RELIEF**

25 Wherefore, CEH 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 Defendant 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 prior clear and reasonable
5 warnings, as CEH 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;

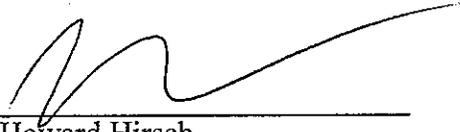
9 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
10 applicable theory, grant CEH its reasonable attorneys’ fees and costs of suit; and

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

13
14 Dated: October 13, 2009

Respectfully submitted,

15 LEXINGTON LAW GROUP

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19 Howard Hirsch
20 Attorneys for Plaintiff
21 CENTER FOR ENVIRONMENTAL HEALTH