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FILED

OCT 20 2010

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: N. Johnson, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10
11 CENTER FOR ENVIRONMENTAL HEALTH,)
12 a non-profit corporation,)

13 Plaintiff,)

14
15 v.)

16)
17 DOLLAR TREE DISTRIBUTION, INC.;)
DOLLAR TREE STORES, INC.;)
18 GREENBRIER INTERNATIONAL, INC.; and)
19 Defendant DOES 1 through 200, inclusive,)

20 Defendants.)
21

Case No. CV1005571

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

(Other)

1 Plaintiff, the 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' aluminum water bottles (the
10 "Products"). Consumers, including children, in California are exposed to Lead when they touch
11 or handle the Products.

12 2. Under California's Safe Drinking Water and Toxic Enforcement Action of
13 1986, commonly known as "Proposition 65" (Health & Safety Code §§ 25249.5, *et seq.*), it is
14 unlawful for businesses to knowingly and intentionally expose any individual in California to
15 chemicals known to the State to cause cancer, birth defects or other reproductive harm without
16 providing clear and reasonable warnings to such individual prior to their exposure. Defendants
17 introduce Products contaminated with significant quantities of Lead into the California
18 marketplace, exposing consumers of their Products, many of whom are children, to Lead.

19 3. Despite the fact that Defendants expose children and other people who
20 come into contact with the Products to Lead, Defendants provide no warnings whatsoever about
21 the carcinogenic or reproductive hazards associated with these Lead exposures. Defendants'
22 conduct thus violates the 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 under Proposition 65. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

2 17. On October 1, 1992, the State of California officially listed lead and lead
3 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
4 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
5 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
6 § 27001(c); Health & Safety Code § 25249.10(b).

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

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

1 322:83-88, 1990.

2 20. Lead exposures to pregnant women are also of particular concern in light
3 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.

4 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
5 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced
6 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health
7 Perspectives* 114:5, 2006.

8 21. Lead is found in the paint or surface coating on the Products. Lead is used
9 as a chemical ingredient in the paint and other coloring agents used in the Products.

10 22. Defendants' Products contain sufficient quantities of Lead such that
11 individuals, including children, who touch and/or handle the Products are exposed to Lead
12 through the average use of the Products. The route of exposure for the violations is direct
13 ingestion when consumers, including children, place the Products in their mouths; ingestion of
14 Lead-containing water from use of the Products; ingestion via hand-to-mouth contact after
15 consumers, including children, touch or handle the Products; and dermal absorption directly
16 through the skin when consumers, including children, touch or handle the Products. These
17 exposures occur in homes, workplaces and everywhere else throughout California where the
18 Products are used, touched or handled.

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

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

25 25. More than sixty days prior to naming each Defendant in this lawsuit, CEH
26 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
27 the District Attorneys of every county in California, the City Attorneys of every California city
28 with a population greater than 750,000 and to each of the named Defendants. In compliance

1 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
2 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
3 time period during which violations occurred; (4) specific descriptions of the violations,
4 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
5 products sold and used in violation of Proposition 65; and (5) the name of the specific
6 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

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

20 27. None of the public prosecutors with the authority to prosecute violations
21 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
22 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
23 of CEH's Notices.

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

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

1 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
2 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
3 § 12201).

4 29. As companies that manufacture, import, distribute and/or sell the Products
5 for use in the California marketplace, Defendants know or should know that the Products contain
6 Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to
7 consumers who use the Products are a natural and foreseeable consequence of Defendants'
8 placing the Products into the stream of commerce.

9 30. Defendants have been informed of the Lead in their Products by CEH's
10 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

11 31. Nevertheless, Defendants continue to expose consumers in California to
12 Lead without prior clear and reasonable warnings regarding the carcinogenic and/or reproductive
13 hazards of Lead.

14 32. Defendants both know and intend that individuals will touch and/or handle
15 the Products, thus exposing them to Lead.

16 33. CEH has engaged in good-faith efforts to resolve the claims alleged herein
17 prior to filing this Complaint.

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

23 **FIRST CAUSE OF ACTION**

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

25 35. CEH realleges and incorporates by reference as if specifically set forth
26 herein Paragraphs 1 through 34, inclusive.

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

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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: October 20, 2010

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH