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FILED

DEC 22 2010

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
) Plaintiff,)
)
) v.)
)
) BANGKIT (U.S.A.), INC.; and DOES 1 through)
200, inclusive,)
)
) Defendants.)

Case No. C1J1006648

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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' vinyl pencil pouches (the "Products").
10 Consumers, including children, are exposed to Lead when they use, touch or handle the
11 Products.

12 2. Under California's Proposition 65, Health & 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, to Lead.

18 3. Despite the fact that Defendants expose children and other consumers to
19 Lead, Defendants provide no warnings whatsoever about the carcinogenic or reproductive
20 hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision
21 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 BANGKIT (U.S.A.), INC. is a person in the course of doing
7 business within the meaning of Health & Safety Code §25249.11. Bangkit (U.S.A.), Inc.
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 Marin Superior Court because one or more of the
28 violations arise in the County of Marin.

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

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

10 17. There is no safe level of exposure to Lead and even minute amounts of
11 Lead exposure have been proven harmful to children and adults. Studies have repeatedly
12 concluded that concentrations of Lead in children's blood previously deemed acceptable can
13 have adverse health effects. *See, e.g., Canfield, R.L., et al., "Intellectual Impairment in Children
14 with Blood Lead Concentrations below 10 ug per Deciliter," New England Journal of Medicine*
15 *348:16, 2003.* Another study on the effect of childhood Lead exposure declared that even the
16 smallest detectable amount of blood Lead levels in children can mean the difference between an
17 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead
18 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform, 2000.*

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

25 19. Lead is found in the vinyl fabric and/or material from which the Products
26 are made.

27 20. Defendants' Products contain sufficient quantities of Lead such that
28 consumers, including children, who handle the Products are exposed to Lead through the average

1 use of the Products. The routes of exposure for the violations are direct ingestion when
2 consumers place the Products or items that have been stored in the Products in their mouths;
3 ingestion via hand-to-mouth contact after consumers touch or handle the Products or items that
4 have been stored in the Products; and dermal absorption directly through the skin when
5 consumers touch or handle the Products or items that have been stored in the Products. These
6 consumer exposures to Lead occur in homes, workplaces and everywhere else throughout
7 California where the Products are touched, handled or used.

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

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

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

24 24. CEH also sent a Certificate of Merit for each Notice to the California
25 Attorney General, the District Attorneys of every county in California, the City Attorneys of
26 every California city with a population greater than 750,000 and to each of the named
27 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each
28 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with

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

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

13 26. Defendants both know and intend that individuals, including children, will
14 use, touch or handle the Products, thus exposing them to Lead.

15 27. Under Proposition 65, an exposure is “knowing” where the party
16 responsible for such exposure has:

17 knowledge of the fact that a[n] . . . exposure to a chemical listed
18 pursuant to [Health & Safety Code §25249.8(a)] is occurring. No
19 knowledge that the . . . exposure is unlawful is required.

20 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
21 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
22 §12201).

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

25 29. Defendants also have constructive knowledge that their Products contain
26 Lead due to the widespread media coverage concerning the problem of Lead in consumer
27 products in general and in products made of vinyl in particular.

28 30. As companies that manufacture, import, distribute and/or sell the Products

1 for use in the California marketplace, Defendants know or should know that the Products contain
2 Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to
3 consumers who use the Products are a natural and foreseeable consequence of Defendants'
4 placing the Products into the stream of commerce.

5 31. Nevertheless, Defendants continue to expose consumers, including
6 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
7 reproductive hazards of Lead.

8 32. CEH has engaged in good-faith efforts to resolve the claims alleged herein
9 prior to filing this Complaint.

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

15 **FIRST CAUSE OF ACTION**

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

17 34. CEH realleges and incorporates by reference as if specifically set forth
18 herein Paragraphs 1 through 33, inclusive.

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

21 36. Lead is a chemical listed by the State of California as known to cause
22 cancer, birth defects and other reproductive harm.

23 37. Defendants know that average use of the Products will expose users of the
24 Products to Lead. Defendants intend that the Products be used in a manner that results in
25 exposures to Lead from the Products.

26 38. Defendants have failed, and continue to fail, to provide clear and
27 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
28 the Products.

