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**FILED**

**APR - 4 2011**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: K. Main, Deputy

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

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

13 Plaintiff, )

14 v. )

15  
16 ADVANCE PUBLISHERS, L.C.; DISNEY )  
CONSUMER PRODUCTS, INC.; DISNEY )  
17 ENTERPRISES, INC.; SAFEWAY INC.; THE )  
WALT DISNEY COMPANY; WALT DISNEY )  
18 WORLD CO.; and DOES 1 through 200, )  
inclusive, )

19 Defendants. )  
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Case No.

CIV 1101717

**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' children's vinyl reusable carrying bags  
10 with Disney Pixar designs (the "Products"). Consumers, including children, are exposed to Lead  
11 when they use, touch or handle the 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 the 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 ADVANCE PUBLISHERS, L.C. is a person in the course of  
7 doing business within the meaning of Health & Safety Code § 25249.11. Advance Publishers,  
8 L.C. manufactures, distributes and/or sells the Products for sale and use in California.

9           6. Defendant DISNEY CONSUMER PRODUCTS, INC. is a person in the  
10 course of doing business within the meaning of Health & Safety Code § 25249.11. Disney  
11 Consumer Products, Inc. manufactures, distributes and/or sells the Products for sale and use in  
12 California.

13           7. Defendant DISNEY ENTERPRISES, INC. is a person in the course of  
14 doing business within the meaning of Health & Safety Code § 25249.11. Disney Enterprises,  
15 Inc. manufactures, distributes and/or sells the Products for sale and use in California.

16           8. Defendant SAFEWAY INC. is a person in the course of doing business  
17 within the meaning of Health & Safety Code § 25249.11. Safeway Inc. manufactures, distributes  
18 and/or sells the Products for sale and use in California.

19           9. Defendant THE WALT DISNEY COMPANY is a person in the course of  
20 doing business within the meaning of Health & Safety Code § 25249.11. The Walt Disney  
21 Company manufactures, distributes and/or sells the Products for sale and use in California.

22           10. Defendant WALT DISNEY WORLD CO. is a person in the course of  
23 doing business within the meaning of Health & Safety Code § 25249.11. Walt Disney World Co.  
24 manufactures, distributes and/or sells the Products for sale and use in California.

25           11. DOES 1 through 200 are each a person in the course of doing business  
26 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,  
27 distribute and/or sell the Products for sale or use in California.

28           12. The true names of DOES 1 through 200 are unknown to CEH at this time.

1 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

2 13. The defendants identified in paragraphs 5 through 10 and DOES 1 through  
3 200 are collectively referred to herein as "Defendants."

4 **JURISDICTION AND VENUE**

5 14. The Court has jurisdiction over this action pursuant to Health & Safety  
6 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
7 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
8 to other trial courts.

9 15. This Court has jurisdiction over Defendants because each is a business  
10 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
11 intentionally avails itself of the California market through the sale, marketing or use of the  
12 Products in California and/or by having such other contacts with California so as to render the  
13 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
14 play and substantial justice.

15 16. Venue is proper in the Marin County Superior Court because one or more of  
16 the violations arise in the County of Marin.

17 **BACKGROUND FACTS**

18 17. The People of the State of California have declared by initiative under  
19 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth  
20 defects, or other reproductive harm." Proposition 65, § 1(b).

21 18. To effectuate this goal, Proposition 65 prohibits exposing people to  
22 chemicals listed by the State of California as known to cause cancer, birth defects or other  
23 reproductive harm above certain levels without a "clear and reasonable warning" unless the  
24 business responsible for the exposure can prove that it fits within a statutory exemption. Health  
25 & Safety Code § 25249.6 states, in pertinent part:

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

1           19.     On February 27, 1987, the State of California officially listed lead as a  
2 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
3 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
4 the developing fetus, “female reproductive toxicity,” which means harm to the female  
5 reproductive system, and “male reproductive toxicity,” which means harm to the male  
6 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,  
7 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead  
8 became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
9 under Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

10           20.     On October 1, 1992, the State of California officially listed lead and lead  
11 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
12 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
13 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
14 § 27001(c); Health & Safety Code § 25249.10(b).

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

26           22.     There is no safe level of exposure to Lead and even minute amounts of  
27 Lead exposure have been proven harmful to children and adults. Studies have repeatedly  
28 concluded that concentrations of Lead in children’s blood previously deemed acceptable can

1 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children  
2 with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*  
3 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the  
4 smallest detectable amount of blood Lead levels in children can mean the difference between an  
5 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead  
6 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

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

13           24. Defendants' Products contain sufficient quantities of Lead such that  
14 consumers, including children, who touch or handle the Products are exposed to Lead through  
15 the average use of the Products. The routes of exposure for the violations are direct ingestion  
16 when consumers place the Products or items that have been stored in the Products in their  
17 mouths; ingestion via hand-to-mouth contact after consumers touch or handle the Products or  
18 items that have been stored in the Products; and dermal absorption directly through the skin when  
19 consumers touch or handle the Products or items that have been stored in the Products. These  
20 exposures occur in homes, workplaces and everywhere else throughout California where these  
21 Products are handled or used.

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

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

28           27. More than sixty days prior to naming each Defendant in this lawsuit, CEH

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

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

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

27           30. Defendants both know and intend that individuals, including children, will  
28 use, touch or handle the Products, thus exposing them to Lead.

1           31. Under Proposition 65, an exposure is “knowing” where the party  
2 responsible for such exposure has:

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

6 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
7 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
8 § 12201).

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

11           33. Defendants also have constructive knowledge that their Products contain  
12 Lead due to the widespread media coverage concerning the problem of Lead in consumer  
13 products in general and in children’s products made of vinyl in particular. The use of Lead in  
14 children’s products made from vinyl has been further publicized with the passage of the federal  
15 Consumer Product Safety Improvement Act (“CPSIA”) in 2008. Although the CPSIA sets strict  
16 Lead content limits for all children’s products, Defendants continue to manufacture, distribute,  
17 and/or sell the Products with substantial quantities of Lead, quantities that far exceed the limits  
18 imposed by the CPSIA.

19           34. As companies that manufacture, import, distribute and/or sell the Products  
20 for use in the California marketplace, Defendants know or should know that the Products contain  
21 Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to  
22 consumers who use the Products are a natural and foreseeable consequence of Defendants’  
23 placing the Products into the stream of commerce.

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

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



1 of Proposition 65 according to proof;

2           2.       That the Court, pursuant to Health & Safety Code § 25249.7(a),  
3 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
4 California without providing prior clear and reasonable warnings, as CEH shall specify in further  
5 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: April 4, 2011

Respectfully submitted,

15 LEXINGTON LAW GROUP

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19 Howard Hirsch

Attorneys for Plaintiff

20 CENTER FOR ENVIRONMENTAL HEALTH

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