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CENTER FOR ENVIRONMENTAL HEALTH
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
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14 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

15)
16 Plaintiff,)

17 v.)

18 FOWNES BROTHERS & CO.,)
INCORPORATED; HSN, INC.; SEARS,)
19 ROEBUCK AND CO.; and Defendant DOES 1)
through 200, inclusive,)

20 Defendants.)
21)
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24)
25)
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Case No. CV 1103700

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

(Other)

FILED

JUL 26 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

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

19 3. Despite the fact that Defendants expose pregnant women, children and
20 other people who come into contact with the Products to Lead, Defendants provide no warnings
21 whatsoever about the carcinogenic or reproductive hazards associated with these Lead exposures.
22 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety
23 Code §25249.6.

24 **PARTIES**

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
26 non-profit corporation dedicated to protecting the public from environmental health hazards and
27 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
28 State of California. CEH is a "person" within the meaning of Health & Safety Code

1 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
2 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
3 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
4 cases have resulted in significant public benefit, including the reformulation of thousands of
5 products to remove toxic chemicals and to make them safer. CEH also provides information to
6 Californians about the health risks associated with exposure to hazardous substances, where
7 manufacturers and other responsible parties fail to do so.

8 5. Defendant FOWNES BROTHERS & CO., INCORPORATED is a person
9 in the course of doing business within the meaning of Health & Safety Code §25249.11. Fownes
10 Brothers & Co., Incorporated manufactures, distributes and/or sells the Products for sale or use in
11 California.

12 6. Defendant HSN, INC. is a person in the course of doing business within
13 the meaning of Health & Safety Code §25249.11. HSN, Inc. manufactures, distributes and/or
14 sells the Products for sale or use in California.

15 7. Defendant SEARS, ROEBUCK AND CO. is a person in the course of
16 doing business within the meaning of Health & Safety Code §25249.11. Sears, Roebuck and Co.
17 manufactures, distributes and/or sells the Products for sale or use in California.

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

21 9. The true names of DOES 1 through 200 are unknown to CEH at this time.
22 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

23 10. The defendant identified in paragraphs 5 through 7 and DOES 1 through
24 200 are collectively referred to herein as "Defendants."

25 **JURISDICTION AND VENUE**

26 11. The Court has jurisdiction over this action pursuant to Health & Safety
27 Code §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
28 to California Constitution Article VI, Section 10, because this case is a cause not given by statute

1 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
2 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

3 17. On October 1, 1992, the State of California officially listed lead and lead
4 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
5 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
6 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
7 §27001(c); Health & Safety Code §25249.10(b).

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

18 19. There is no safe level of exposure to Lead and even minute amounts of
19 Lead exposure have been proven harmful to children and adults. Studies have repeatedly
20 concluded that concentrations of Lead in children's blood previously deemed acceptable can
21 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children
22 with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*
23 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the
24 smallest detectable amount of blood Lead levels in children can mean the difference between an
25 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead
26 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

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

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

5 21. Defendants' Products contain sufficient quantities of Lead such that
6 consumers, including pregnant women and children, who use, touch and/or handle the Products
7 are exposed to Lead through the average use of the Products. The route of exposure for the
8 violations is direct ingestion when consumers place their hands in their mouths while wearing the
9 Products or otherwise place the Products in their mouths; ingestion via hand-to-mouth contact
10 after consumers touch, wear or handle the Products; and dermal absorption directly through the
11 skin when consumers wear, take on or off, touch or handle the Products. These exposures occur
12 in homes, workplaces and everywhere else throughout California where the Products are worn,
13 touched or handled.

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

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

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

1 chemical that is the subject of the violations described in each Notice.

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

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

19 27. Defendants both know and intend that individuals, including pregnant
20 women and children, will wear, touch and/or handle the Products, thus exposing them to Lead.

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

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

26 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
27 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
28 §12201).

1 the Products.

2 39. By committing the acts alleged above, Defendants have at all times
3 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
4 individuals to Lead without first giving clear and reasonable warnings to such individuals
5 regarding the carcinogenicity and reproductive toxicity of Lead.

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

7 **PRAYER FOR RELIEF**

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

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

12 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
13 preliminarily and permanently enjoin Defendants from offering the Products for sale in
14 California without providing prior clear and reasonable warnings, as CEH shall specify in further
15 application to the Court;

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

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

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

23 Dated: July 26, 2011

Respectfully submitted,

24 LEXINGTON LAW GROUP

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27 Howard Hirsch
28 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH