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CENTER FOR ENVIRONMENTAL HEALTH

**FILED**

**APR 19 2012**

**KIM TURNER**  
Court Executive Officer  
**MARIN COUNTY SUPERIOR COURT**  
By: J. Chen, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF MARIN

14 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
15 )  
Plaintiff, )  
16 )  
v. )  
17 )  
TARGET CORPORATION; and Defendant )  
18 DOES 1 through 200, inclusive, )  
19 Defendants. )  
20 \_\_\_\_\_ )

Case No.   Civ 1201875    
**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/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 11. Venue is proper in the Marin Superior Court because one or more of the  
2 violations arise in the County of Marin.

3 **BACKGROUND FACTS**

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

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

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

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

24 15. On October 1, 1992, the State of California officially listed lead and lead  
25 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
26 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
27 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
28 §27001(c); Health & Safety Code §25249.10(b).

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

11                   17.     There is no safe level of exposure to Lead and even minute amounts of  
12 Lead exposure have been proven harmful to children and adults. Studies have repeatedly  
13 concluded that concentrations of Lead in children's blood previously deemed acceptable can  
14 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children  
15 with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*  
16 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the  
17 smallest detectable amount of blood Lead levels in children can mean the difference between an  
18 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead  
19 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.  
20 A recent study found that childhood Lead exposure actually predicts intellectual functioning in  
21 early adulthood in that adult IQ levels are inversely associated with blood Lead concentrations  
22 from childhood. Mazumdar, M., Bellinger, D.C., Gregas, M., Abanilla, K., Bacic, J.,  
23 Needleman, H.L., "Low-Level Environmental Lead Exposure in Childhood and Adult  
24 Intellectual Function: A Follow-Up Study," *Environmental Health* 10:24, 2011.

25                   18.     Lead exposures for pregnant women are also of particular concern in light  
26 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.  
27 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
28 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced

1 Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental Health*  
2 *Perspectives* 114:5, 2006.

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

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

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

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

28 23. CEH also sent a Certificate of Merit for each Notice to the California

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

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

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

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

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

24           27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
25 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
26 §12201).

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





1 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
2 individuals to Lead without first giving clear and reasonable warnings to such individuals  
3 regarding the carcinogenicity and reproductive toxicity of Lead.

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

5 **PRAYER FOR RELIEF**

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

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

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

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

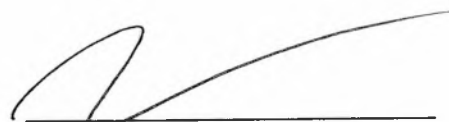
17 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other  
18 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

21 Dated: April 19, 2012

Respectfully submitted,

22 LEXINGTON LAW GROUP

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25 Howard Hirsch  
26 Attorneys for Plaintiff  
27 CENTER FOR ENVIRONMENTAL HEALTH  
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