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CENTER FOR ENVIRONMENTAL HEALTH
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)
15 Plaintiff,)
16 v.)
17 SHENG KEE OF CALIFORNIA, INC.; and)
18 DOES 1 through 200, inclusive,)
19 Defendants.)
20 _____)

CGC-12-527269
Case No. _____
**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**
Health & Safety Code § 25249.6, *et seq.*
(Other)

**ENDORSED
FILED**
Superior Court of California
County of San Francisco
DEC 19 2012
CLERK OF THE COURT
BY: MARYANN MORAN
Deputy Clerk

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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' plastic shopping bags (the "Products").
10 Consumers, including pregnant women and children, are exposed to Lead when they use, touch
11 or handle the Products or items that have been stored in 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 pregnant women and
18 children, to Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and
20 other consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
21 reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the
22 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 more of the violations arise in the County of San Francisco.

2 **BACKGROUND FACTS**

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

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

11 No person in the course of doing business shall knowingly and
12 intentionally expose any individual to a chemical known to the
13 state to cause cancer or reproductive toxicity without first giving
14 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
21 year after it was listed as a chemical known to cause reproductive toxicity, lead became subject to
22 the clear and reasonable warning requirement regarding reproductive toxicants under Proposition
23 65. *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).

16. Young children are especially susceptible to the toxic effects of Lead.

1 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
2 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
3 absorb and retain more Lead in proportion to their weight than do adults. Young children also
4 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
5 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
6 small doses received in childhood, over time, can cause adverse health impacts, including but not
7 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
8 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
9 increasing the level of Lead in the blood and increasing the risk of harm 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 recent study found that childhood Lead exposure predicts intellectual
16 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead
17 concentrations from childhood. Mazumdar, M., *et al.*, "Low-Level Environmental Lead
18 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study," *Environmental*
19 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, "Subclinical Lead Toxicity in U.S. Children
20 and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the
21 smallest detectable amount of blood Lead levels in children can mean the difference between an
22 A or B grade in school).

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

1 19. Defendants' Products contain sufficient quantities of Lead such that
2 consumers, including pregnant women and children, who touch or handle the Products are
3 exposed to Lead through the average use of the Products. The routes of exposure for the
4 violations are direct ingestion when consumers place the Products or items that have been stored
5 in the Products in their mouths; ingestion via hand to mouth contact after consumers touch or
6 handle the Products or items that have been stored in the Products; and dermal absorption
7 directly through the skin when consumers touch or handle the Products or items that have been
8 stored in the Products. These exposures occur in homes, workplaces and everywhere else
9 throughout California where these Products are handled or used.

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

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

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

26 23. CEH also sent a Certificate of Merit for each Notice to the California
27 Attorney General, the District Attorneys of every county in California, the City Attorneys of
28 every California city with a population greater than 750,000 and to each named Defendant. In

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

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

15 25. Defendants both know and intend that individuals, including pregnant
16 women and children, will use, touch or handle the Products, thus exposing them to Lead.

17 26. Under Proposition 65, an exposure is "knowing" where the party
18 responsible for such exposure has:

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

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

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

27 28. Defendants also have constructive knowledge that their Products contain
28 Lead due to the widespread media coverage concerning the problem of Lead in consumer

