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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

DEC 12 2013

CLERK OF THE SUPERIOR COURT
By A. Moyle Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
vs.)
)
DGL GROUP, LTD.; THE PEP BOYS MANNY)
MOE & JACK OF CALIFORNIA; and DOES 1)
through 200, inclusive,)
)
Defendants.)

Case No. **RG 13706587**

**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' folio cases made with leather, vinyl, or
10 imitation leather materials (the "Products"). Consumers, including pregnant women, are exposed
11 to Lead 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 pregnant women, to Lead.

18 3. Despite the fact that Defendants expose pregnant women and other
19 consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
20 reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the
21 warning provision of Proposition 65. Health & Safety Code § 25249.6.

22 PARTIES

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-
24 profit corporation dedicated to protecting the public from environmental health hazards and toxic
25 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
26 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 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
2 play and substantial justice.

3 12. Venue is proper in the Alameda County Superior Court because one or more
4 of the violations arise in the County of Alameda.

5 **BACKGROUND FACTS**

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

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

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

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

26 16. On October 1, 1992, the State of California officially listed lead and lead
27 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
28

1 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
2 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
3 § 27001(c); Health & Safety Code § 25249.10(b).

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

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

23 19. 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. Hu,
25 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, Lourdes, *et al.*,
27 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*
28 *Health Perspectives* 114:5, 2006.

1 20. Defendants' Products contain sufficient quantities of Lead such that
2 consumers, including pregnant women, who touch or handle the Products are exposed to Lead
3 through the average use of the Products. The routes of exposure for the violations are ingestion
4 via hand-to-mouth contact after consumers touch or handle the Products, and dermal absorption
5 directly through the skin when consumers touch or handle the Products. These exposures occur
6 in homes, workplaces, and everywhere else throughout California where these Products are
7 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 with
18 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 each violator; (2) the statute violated; (3) the
20 time period during which violations occurred; (4) specific descriptions of the violations, including
21 (a) the routes of exposure to Lead from the Products, and (b) the specific type of Products sold
22 and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
23 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 relevant

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

9 25. None of the public prosecutors with the authority to prosecute violations of
10 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 each
12 of CEH’s Notices.

13 26. Defendants both know and intend that individuals, including pregnant
14 women, will 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 leather, vinyl, or imitation leather materials in
28 particular.

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

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

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

PRAYER FOR RELIEF

Wherefore, CEH prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation of Proposition 65 according to proof;
2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendants from offering the Products for sale in California without providing prior clear and reasonable warnings, as CEH shall specify in further application to the Court;
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by Defendants, as CEH shall specify in further application to the Court;
4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: December 12, 2013

Respectfully submitted,
LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH