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ENDORSED
FILED
ALAMEDA COUNTY
JUN 12 2014
CLERK OF THE SUPERIOR COURT
By _____ Deputy
PILIPINO TUNGOHAN

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
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12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
13)
14 Plaintiff,)
15)
16 v.)
17)
18 HARBOR FREIGHT TOOLS USA, INC.;)
CENTRAL PURCHASING, LLC; and)
19 Defendant DOES 1 through 300, inclusive,)
20 Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

Case No. RG 14728823

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Health & Safety Code § 25249.6, *et seq.*
(Other)

1 Plaintiff, the 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' farm jacks with painted handles
10 (collectively, "Farm Jacks") and tool bags made with vinyl-coated nylon (collectively, "Tool
11 Bags"). Farm Jacks and Tool Bags are collectively referred to herein as "Products." Consumers
12 in California are exposed to Lead when they use, touch, and/or handle the Products.

13 2. Under California's Safe Drinking Water and Toxic Enforcement Action of
14 1986, commonly known as "Proposition 65" (Health & Safety Code §§ 25249.5, *et seq.*), it is
15 unlawful for businesses to knowingly and intentionally expose any individuals in California to
16 chemicals known to the State to cause cancer, birth defects, or other reproductive harm without
17 providing clear and reasonable warnings to such individuals prior to their exposure. Defendants
18 introduce Products contaminated with significant quantities of Lead into the California
19 marketplace, exposing consumers of their Products to Lead.

20 3. Despite the fact that Defendants expose people who come into contact
21 with the Products to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
22 reproductive hazards associated with these Lead exposures. Defendants' conduct thus violates
23 the warning provision of Proposition 65. Health & Safety 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
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1 State of California. CEH is a “person” within the meaning of Health & Safety Code
2 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
3 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
4 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
5 cases have resulted in significant public benefit, including the reformulation of thousands of
6 products to remove toxic chemicals to make them safer. CEH also provides information to
7 Californians about the health risks associated with exposure to hazardous substances, where
8 manufacturers and other responsible parties fail to do so.

9 5. Defendant HARBOR FREIGHT TOOLS USA, INC. is a person in the
10 course of doing business within the meaning of Health & Safety Code § 25249.11. Harbor
11 Freight Tools USA, Inc. manufactures, distributes, and/or sells Farm Jacks and Tool Bags for
12 sale or use in California.

13 6. Defendant CENTRAL PURCHASING, LLC is a person in the course of
14 doing business within the meaning of Health & Safety Code § 25249.11. Central Purchasing,
15 LLC manufactures, distributes, and/or sells Farm Jacks and Tool Bags for sale or use in
16 California.

17 7. DOES 1 through 100 are each a person in the course of doing business
18 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture,
19 distribute, and/or sell Farm Jacks for sale or use in California. Defendants HARBOR FREIGHT
20 TOOLS USA, INC.; CENTRAL PURCHASING, LLC; and DOES 1 through 100 are
21 collectively referred to herein as “Farm Jacks Defendants.”

22 8. DOES 101 through 200 are each a person in the course of doing business
23 within the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,
24 distribute, and/or sell Tool Bags for sale or use in California. Defendants HARBOR FREIGHT
25 TOOLS USA, INC.; CENTRAL PURCHASING, LLC; and DOES 101 through 200 are
26 collectively referred to herein as “Tool Bags Defendants.”

27 9. DOES 201 through 300 are each a person in the course of doing business
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1 within the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,
2 distribute, and/or sell Farm Jacks and Tool Bags for sale or use in California.

3 10. The true names of DOES 1 through 300 are unknown to CEH at this time.
4 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

5 11. The defendants identified in paragraphs 5 and 6 and DOES 1 through 300
6 are collectively referred to herein as “Defendants.”

7 JURISDICTION AND VENUE

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

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

18 14. Venue is proper in the Alameda County Superior Court because one or
19 more of the violations arise in the County of Alameda.

20 BACKGROUND FACTS

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

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

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

5 17. On February 27, 1987, the State of California officially listed lead as a
6 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
7 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
8 the developing fetus, “female reproductive toxicity,” which means harm to the female
9 reproductive system, and “male reproductive toxicity,” which means harm to the male
10 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,
11 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
12 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
13 under Proposition 65. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

14 18. On October 1, 1992, the State of California officially listed lead and lead
15 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
16 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
17 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
18 § 27001(c); Health & Safety Code § 25249.10(b).

19 19. Harms from consumer exposure to Lead are well-documented. The U.S.
20 Environmental Protection Agency has determined that there is no safe level of exposure to Lead,
21 based on the best science available. See [http://water.epa.gov/drink/contaminants/
22 basicinformation/lead.cfm](http://water.epa.gov/drink/contaminants/basicinformation/lead.cfm). Lead in blood, even at very low levels, has been found to be
23 correlated with all causes of mortality, including cancer and cardiovascular disease. See Menke,
24 A., *et al.*, “Blood Lead Below 0.48 µmol/L (10 µg/dL) and Mortality Among US Adults,”
25 *Circulation* (September 2009) Vol. 114:13; Schober, S., *et al.*, “Blood Lead Levels and Death
26 from All Causes, Cardiovascular Disease, and Cancer,” *Environmental Health Perspectives*
27 (October 2006) Vol. 114:10; Cheung, M., “Blood Lead Concentration Correlates with All Cause,
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1 All Cancer and Lung Cancer Mortality in Adults,” *Asian Pacific Journal of Cancer Prevention*
2 (2013) Vol. 14.

3 20. Lead exposures to pregnant women are also of particular concern in light
4 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.
5 *See* Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant
6 Mental Development,” *Environmental Health Perspectives* (November 2006) Vol. 114:11;
7 Schnaas, L., *et al.*, “Reduced Intellectual Development in Children with Prenatal Lead
8 Exposure,” *Environmental Health Perspectives* (May 2006) Vol. 114:5.

9 21. Lead is found in the paint used on the handles of Farm Jacks and in the
10 vinyl coating used as backing for the nylon of which Tool Bags are made. Lead is used in Farm
11 Jacks as a chemical ingredient in the paint and other coloring agents used in those Products, and
12 in Tool Bags as a stabilizing additive and/or coloring agent in the vinyl used in those Products.

13 22. Defendants’ Products contain sufficient quantities of Lead such that
14 individuals who touch and/or handle the Products are exposed to Lead through the average use of
15 the Products. The route of exposure for the violations is ingestion via hand-to-mouth contact and
16 dermal absorption directly through the skin. Consumer exposures to Lead from the Products
17 occur when consumers use or otherwise touch and handle the Products. These exposures occur
18 in homes, workplaces, and everywhere else throughout California where the Products are used,
19 touched, or handled.

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

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

26 25. More than sixty days prior to naming each Defendant in this lawsuit, CEH
27 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
28

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

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

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

26 28. Defendants both know and intend that individuals will use or otherwise
27 touch and/or handle the Products, thus exposing them to Lead.
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1 29. 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 and Safety Code § 25249.8(a)] is occurring.
5 No 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 30. Defendants have been informed of the Lead in their Products by the
10 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

11 31. 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, Lead in paint specifically, and Lead in products containing vinyl in
14 particular.

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

20 33. Nevertheless, Defendants continue to expose consumers in California to
21 Lead without prior clear and reasonable warnings regarding the carcinogenic and/or reproductive
22 hazards of Lead.

23 34. CEH has engaged in good-faith efforts to resolve the claims alleged herein
24 prior to filing this Complaint.

25 35. Any person “violating or threatening to violate” Proposition 65 may be
26 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to
27 violate” is defined to mean “to create a condition in which there is a substantial probability that a
28 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil

1 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

2 **FIRST CAUSE OF ACTION**
3 **(Violations of Health & Safety Code § 25249.6)**
4 **(Against Farm Jacks Defendants Only)**

5 36. CEH realleges and incorporates by reference as if specifically set forth
6 herein Paragraphs 1 through 35, inclusive.

7 37. Lead is a chemical listed by the State of California as known to cause
8 cancer and birth defects or other reproductive harm.

9 38. By placing their Farm Jacks into the stream of commerce, each Farm Jacks
10 Defendant is a person in the course of doing business within the meaning of Health & Safety
11 Code § 25249.11.

12 39. Farm Jacks Defendants know that average use of their Farm Jacks will
13 expose users of Farm Jacks to Lead. Farm Jacks Defendants intend that their Farm Jacks be used
14 in a manner that results in users of their Farm Jacks being exposed to Lead contained in these
15 Products.

16 40. Farm Jacks Defendants have failed, and continue to fail, to provide prior
17 clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead
18 contained in their Farm Jacks to users of these Products.

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

23 Wherefore, CEH prays for judgment against Farm Jacks Defendants, as set forth
24 hereafter.

25 **SECOND CAUSE OF ACTION**
26 **(Violations of Health & Safety Code § 25249.6)**
27 **(Against Tool Bags Defendants Only)**

28 42. CEH realleges and incorporates by reference as if specifically set forth
herein Paragraphs 1 through 41, inclusive.

1 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order
2 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from the
3 manufacture, distribution, sale, and/or use of Products sold by Defendants, as CEH shall specify
4 in further application to the Court;

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

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

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10 Dated: June 12, 2014

Respectfully submitted,

LEXINGTON LAW GROUP

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15 Joseph Mann
16 Attorneys for Plaintiff
17 CENTER FOR ENVIRONMENTAL HEALTH
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