

1 LEXINGTON LAW GROUP
Howard Hirsch, State Bar No. 213209
2 Joseph Mann, State Bar No. 207968
503 Divisadero Street
3 San Francisco, CA 94117
Telephone: (415) 913-7800
4 Facsimile: (415) 759-4112
hhirsch@lexlawgroup.com
5 jmann@lexlawgroup.com

6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

FEB - 3 2016

CLERK OF THE SUPERIOR COURT
By M. Salcido

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

RG16802667

12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

Case No. _____

14 Plaintiff,)

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

16 v.)

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

(Other)

18 99 CENTS ONLY STORES LLC; and DOES 1)
through 300, inclusive,)

20 Defendants.)

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' mops with painted handles
10 (collectively, "Mops") and painted metal clamps (collectively, "Clamps"). Mops and Clamps are
11 collectively referred to herein as "Products." Consumers in California are exposed to Lead when
12 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 99 CENTS ONLY STORES LLC is a person in the course of
10 doing business within the meaning of Health & Safety Code § 25249.11. 99 CENTS ONLY
11 STORES LLC manufactures, distributes, and/or sells Mops and Clamps for sale or use in
12 California.

13 6. DOES 1 through 100 are each a person in the course of doing business
14 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture,
15 distribute, and/or sell Mops for sale or use in California. Defendant 99 CENTS ONLY STORES
16 LLC and DOES 1 through 100 are collectively referred to herein as "Mops Defendants."

17 7. DOES 101 through 200 are each a person in the course of doing business
18 within the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,
19 distribute, and/or sell Clamps for sale or use in California. Defendant 99 CENTS ONLY
20 STORES LLC and DOES 101 through 200 are collectively referred to herein as "Clamps
21 Defendants."

22 8. DOES 201 through 300 are each a person in the course of doing business
23 within the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,
24 distribute, and/or sell Mops and Clamps for sale or use in California.

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

27 10. The defendant identified in paragraph 5 and DOES 1 through 300 are
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1 collectively referred to herein as "Defendants."

2 **JURISDICTION AND VENUE**

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

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

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

15 **BACKGROUND FACTS**

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

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

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

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

9 17. On October 1, 1992, the State of California officially listed lead and lead
10 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
11 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
12 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
13 § 27001(c); Health & Safety Code § 25249.10(b).

14 18. Harms from consumer exposure to Lead are well-documented. The U.S.
15 Environmental Protection Agency has determined that there is no safe level of exposure to Lead,
16 based on the best science available. See [https://safewater.zendesk.com/hc/en-us/articles/
17 211401938-4-What-are-EPA-s-drinking-water-regulations-for-lead-](https://safewater.zendesk.com/hc/en-us/articles/211401938-4-What-are-EPA-s-drinking-water-regulations-for-lead-). Lead in blood, even at very
18 low levels, has been found to be correlated with all causes of mortality, including cancer and
19 cardiovascular disease. See Menke, A., *et al.*, “Blood Lead Below 0.48 µmol/L (10 µg/dL) and
20 Mortality Among US Adults,” *Circulation* (September 2009) Vol. 114:13; Schober, S., *et al.*,
21 “Blood Lead Levels and Death from All Causes, Cardiovascular Disease, and Cancer,”
22 *Environmental Health Perspectives* (October 2006) Vol. 114:10; Cheung, M., “Blood Lead
23 Concentration Correlates with All Cause, All Cancer and Lung Cancer Mortality in Adults,”
24 *Asian Pacific Journal of Cancer Prevention* (2013) Vol. 14.

25 19. 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 See Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant
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1 Mental Development,” *Environmental Health Perspectives* (November 2006) Vol. 114:11;
2 Schnaas, L., *et al.*, “Reduced Intellectual Development in Children with Prenatal Lead
3 Exposure,” *Environmental Health Perspectives* (May 2006) Vol. 114:5. For example, in times of
4 physiological stress, such as pregnancy, the body can mobilize accumulated stores of Lead in
5 tissue and bone, thereby increasing the level of Lead in the blood and increasing the risk of harm
6 to the fetus.

7 20. Lead is found in the paint used on the handles of Mops and on the metal of
8 which Clamps are made. Lead is used in Mops and Clamps as a chemical ingredient in the paint
9 and other coloring agents used in those Products.

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

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

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

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

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

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

23 27. Defendants both know and intend that individuals will use or otherwise
24 touch and/or handle the Products, thus exposing them to Lead.

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

27 knowledge of the fact that a[n] . . . exposure to a chemical listed
28 pursuant to [Health and Safety Code § 25249.8(a)] is occurring.

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No knowledge that the . . . exposure is unlawful is required.

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

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

30. Defendants also have constructive knowledge that their Products contain Lead due to the widespread media coverage concerning the problem of Lead in consumer products in general, and Lead in paint specifically.

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

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

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

34. Any person "violating or threatening to violate" Proposition 65 may be enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is defined to mean "to create a condition in which there is a substantial probability that a violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not to exceed \$2,500 per day for each violation of Proposition 65.

FIRST CAUSE OF ACTION
(Violations of Health & Safety Code § 25249.6)
(Against Mops Defendants Only)

35. CEH realleges and incorporates by reference as if specifically set forth

1 herein Paragraphs 1 through 34, inclusive.

2 36. Lead is a chemical listed by the State of California as known to cause
3 cancer and birth defects or other reproductive harm.

4 37. By placing their Mops into the stream of commerce, each Mops Defendant
5 is a person in the course of doing business within the meaning of Health & Safety Code §
6 25249.11.

7 38. Mops Defendants know that average use of their Mops will expose users
8 of Mops to Lead. Mops Defendants intend that their Mops be used in a manner that results in
9 users of their Mops being exposed to Lead contained in these Products.

10 39. Mops Defendants have failed, and continue to fail, to provide prior clear
11 and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead
12 contained in their Mops to users of these Products.

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

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

19 **SECOND CAUSE OF ACTION**
20 **(Violations of Health & Safety Code § 25249.6)**
21 **(Against Clamps Defendants Only)**

22 41. CEH realleges and incorporates by reference as if specifically set forth
23 herein Paragraphs 1 through 40, inclusive.

24 42. Lead is a chemical listed by the State of California as known to cause
25 cancer and birth defects or other reproductive harm.

26 43. By placing their Clamps into the stream of commerce, each Clamps
27 Defendant is a person in the course of doing business within the meaning of Health & Safety
28 Code § 25249.11.

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

Dated: February 3, 2016

Respectfully submitted,

LEXINGTON LAW GROUP



Joseph Mann
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH