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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

FILED
San Francisco County Superior Court

AUG 18 2020

CLERK OF THE COURT
BY: *C. Helen Johnson*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

S.P. RICHARDS CO.; and DOES 1 through 100,
inclusive,

Defendants.

CGC-20-586195

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

(Other)

BY FAX

1 Plaintiff Center for Environmental Health, in the public interest, based on information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 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 bisphenol A ("BPA"), a chemical known
7 to the State of California to cause birth defects and other reproductive harm. Such exposures
8 have occurred, and continue to occur, when people handle thermal paper coated with BPA
9 ("Thermal Paper") that is manufactured, distributed, sold or otherwise provided to consumers by
10 Defendants. Consumers, including pregnant women, are exposed to BPA when they touch or
11 handle the Thermal Paper.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
13 unlawful for businesses to knowingly and intentionally expose individuals in California to
14 chemicals known to the State to cause birth defects or other reproductive harm without first
15 providing clear and reasonable warnings to exposed individuals. Defendants introduce Thermal
16 Paper containing significant quantities of BPA into the California marketplace, either directly by
17 selling the Thermal Paper or by distributing Thermal Paper as transactional documents, such as
18 receipts from cash registers and airline boarding passes, to California consumers.

19 3. Thermal Paper is treated with a surface coating of BPA. When Thermal Paper is
20 exposed to heat from a thermal printer, the BPA reacts with other chemicals on the surface of the
21 Thermal Paper by changing color to appear like ink on the paper. California consumers, many of
22 whom are pregnant women, are thus exposed to BPA when they touch or otherwise handle the
23 Thermal Paper.

24 4. Despite the fact that Defendants expose pregnant women and other individuals to
25 BPA, Defendants provide no warnings whatsoever about the reproductive hazards associated with
26 BPA exposure. Defendants' conduct thus violates the warning provision of Proposition 65.
27 Health & Safety Code § 25249.6.

28

1 PARTIES

2 5. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a non-profit
3 corporation dedicated to protecting the public from environmental health hazards and toxic
4 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
5 California. CEH is a “person” within the meaning of Health & Safety Code § 25249.11(a) and
6 brings this enforcement action in the public interest pursuant to Health & Safety Code §
7 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
8 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
9 resulted in significant public benefit, including the reformulation of thousands of products to
10 remove toxic chemicals and to make them safer. CEH also provides information to Californians
11 about the health risks associated with exposure to hazardous substances, where manufacturers and
12 other responsible parties fail to do so.

13 6. Defendant S.P. RICHARDS CO. is a person in the course of doing business within
14 the meaning of Health & Safety Code § 25249.11. S.P. RICHARDS CO. sells or otherwise
15 makes available Thermal Paper that is provided to California consumers as receipts for the
16 purchase of other goods or services.

17 7. DOES 1 through 100 are each a person in the course of doing business within the
18 meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture, distribute, sell
19 or otherwise make available Thermal Paper that is offered for sale in California or provided as
20 receipts or other transactional documentation to California consumers.

21 8. The true names of DOES 1 through 100 are either unknown to CEH at this time or
22 the applicable time period before which CEH may file a Proposition 65 action has not run. When
23 their identities are ascertained or the applicable time period before which CEH may file a
24 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

25 9. The defendants identified in paragraph 6 and DOES 1 through 100 are collectively
26 referred to herein as “Defendants.”
27
28

1 **JURISDICTION AND VENUE**

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

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

12 12. Venue is proper in San Francisco County Superior Court because one or more of
13 the violations arise in the County of San Francisco.

14 **BACKGROUND FACTS**

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

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

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

26 15. On May 11, 2015, the State of California officially listed BPA as a chemical
27 known to cause reproductive toxicity. BPA is specifically identified as a reproductive toxicant
28 under the subcategory “female reproductive toxicity,” which means harm to the female

1 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On May 11,
2 2016, one year after it was listed as a chemical known to cause reproductive toxicity, BPA
3 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
4 under Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

5 16. Exposure to BPA, a known endocrine disruptor, has been associated with
6 numerous adverse reproductive impacts. One study summarizing recent scientific research
7 concluded that BPA acts as both an ovarian toxicant (*e.g.*, by altering levels of sex hormones and
8 reducing egg quality) and as a uterine toxicant (*e.g.*, by impairing the ability of the embryo to
9 implant in the uterus). Peretz, J., *et al.*, “Bisphenol A and Reproductive Health: Update of
10 Experimental and Human Evidence, 2007–2013,” *Environmental Health Perspectives*, Vol.
11 122:8, August 2014. Another recent study focusing on human epidemiological studies confirmed
12 these impacts, and further found BPA exposure to be linked to a host of developmental harms,
13 including disrupted neurological development and increased asthma prevalence in children.
14 Rochester, J., “Bisphenol A and Human Health: A Review of the Literature,” *Reproductive*
15 *Toxicology*, Vol. 42, December 2013.

16 17. Thermal Paper is a specialty paper designed for use in thermal printers. Thermal
17 Paper has a layer of a reactant acid combined with a dye on the surface of the Thermal Paper.
18 When heated in a thermal printer, the molecules in the dye bond with molecules in the reactant
19 acid (often called the developer) on the surface of the Thermal Paper to produce text, numbers or
20 images. This resulting darkening of the Thermal Paper appears like ink on the paper surface. The
21 reactant acid in the Thermal Paper at issue here is BPA. Thus, BPA is intentionally added to the
22 surface of the Thermal Paper as a functional component of the paper. Without the precise amount
23 of BPA, the Thermal Paper will not produce images and text accurately.

24 18. Thermal Paper is used for a diverse array of purposes. Thermal Paper is often
25 used in generating receipts from cash registers, credit card terminals and similar devices.
26 Thermal Paper is also used in generating other transactional documents, such as service and repair
27 estimates, invoices and order forms, delivery notices, and transportation documentation. Thermal
28 Paper is used in label makers and fax machines as well.

1 19. BPA is transferred from the surface of the Thermal Paper to the hands when the
2 Thermal Paper is touched or handled. Absorption of BPA increases when hands are damp or oily,
3 such as a person who has recently wiped their forehead or handled greasy food, or when the
4 handler has used personal care products on their skin, such as hand sanitizer, soap or lotion. *See,*
5 *e.g.,* Hormann, A., *et al.*, “Holding Thermal Receipt Paper and Eating Food after Using Hand
6 Sanitizer Results in High Serum Bioactive and Urine Total Levels of Bisphenol A (BPA),” *PLOS*
7 *ONE*, Vol. 9:10, October 2014; Biedermann, S., *et al.*, “Transfer of Bisphenol A from Thermal
8 Printer Paper to the Skin,” *Analytical & Bioanalytical Chemistry*, Vol. 398:1, September 2010.

9 20. Defendants’ Thermal Paper contains sufficient quantities of BPA such that
10 consumers, including pregnant women, who touch or handle the Thermal Paper are exposed to
11 significant amounts of BPA. The primary routes of exposure for the violations are dermal
12 absorption directly through the skin when consumers touch or handle Thermal Paper, and
13 ingestion via hand-to-mouth contact after consumers touch or handle Thermal Paper. These
14 exposures occur in homes, restaurants, workplaces, airline, train and bus terminals and
15 everywhere else throughout California where the Thermal Paper is touched or handled.

16 21. No clear and reasonable warning is provided with Defendants’ Thermal Paper
17 regarding the reproductive hazards of BPA.

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

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

1 routes of exposure to BPA from Thermal Paper, and (b) the specific type of product violating
2 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical (BPA) that is the
3 subject of the violations described in each Notice.

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

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

21 26. Defendants know and intend that individuals, including pregnant women, will
22 touch or handle Thermal Paper, thus exposing them to BPA.

23 27. Under Proposition 65, an exposure is "knowing" where the party responsible for
24 such exposure has:

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

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

1 § 12601).

2 28. The named Defendant has been informed of the BPA in its Products by the 60-Day
3 Notice of Violation and accompanying Certificate of Merit served on it by CEH.

4 29. Because Thermal Paper requires a phenol-based reactant such as BPA in order to
5 produce text or images, Defendants should have known that their Thermal Paper could contain
6 BPA. Further, Defendants also have constructive knowledge that their Thermal Paper contains
7 BPA due to the widespread media coverage concerning the problem of BPA in consumer
8 products in general, and on documents printed on Thermal Paper in particular. The problem of
9 BPA exposures from Thermal Paper has been the subject of articles in national newspapers,
10 industry trade papers and scholarly journals, as well as numerous Internet postings.

11 30. As companies that manufacture, import, distribute, sell or otherwise provide
12 Thermal Paper to consumers, Defendants know or should know that Thermal Paper contains BPA
13 and that individuals who touch or handle Thermal Paper will be exposed to BPA. The BPA
14 exposures to consumers who touch or handle Thermal Paper are a natural and foreseeable
15 consequence of Defendants' placing Thermal Paper into the stream of commerce and/or
16 dispensing Thermal Paper to California consumers.

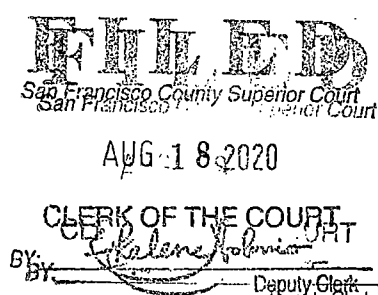
17 31. Nevertheless, Defendants continue to expose consumers, including children, to
18 BPA without prior clear and reasonable warnings regarding the reproductive hazards of BPA.

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

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

26 **FIRST CAUSE OF ACTION**
27 **(Violations of Health & Safety Code § 25249.6)**

28 34. CEH realleges and incorporates by reference as if specifically set forth herein
Paragraphs 1 through 33, inclusive.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric S. Somers (SBN 139050) Lexington Law Group 503 Divisadero Street San Francisco, CA 94117 TELEPHONE NO.: (415) 913-7800 FAX NO.: (415) 759-4112 ATTORNEY FOR (Name): Center for Environmental Health		FOR COURT USE ONLY 
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		
CASE NAME: CEH v. S.P. Richards Co., et al.		CASE NUMBER: CGC-20-586195
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
JUDGE:		DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23)	Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

BY FAX

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **One: Violations of Health & Safety Code §25249.6**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 17, 2020
Eric S. Somers

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.