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LEXINGTON LAW GROUP, LLP
Patrick Carey, State Bar No. 308623
Joseph Mann, State Bar No. 207968
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
pcarey@lexlawgroup.com
jmann@lexlawgroup.com

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/31/2024
Clerk of the Court
BY: MARK UDAN
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

KHS AMERICA, INC.; YAMAHA
CORPORATION OF AMERICA; and DOES 1
through 100, inclusive,

Defendants.

Case No. CGC-24-615171

**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 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 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. Defendants manufacture, distribute, and/or sell brass mouthpieces used with
9 musical instruments (the "Products"). Consumers, including children and pregnant women, have
10 been and continue to be exposed to Lead when they place the Products in their mouth while
11 playing the musical instruments with which they are intended to be used, and ingestion via hand-
12 to-mouth contact after such persons touch or handle the Products.

13 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et seq.*, it is
14 unlawful for businesses to knowingly and intentionally expose individuals in California to
15 chemicals known to the State to cause cancer, birth defects, or other reproductive harm without
16 providing clear and reasonable warnings to such individuals prior to their exposure. Defendants
17 introduce Products containing significant quantities of Lead into the California marketplace,
18 thereby exposing individuals who use their Products, many of whom are children and pregnant
19 women, to Lead.

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

24 **PARTIES**

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
26 corporation dedicated to protecting the public from environmental health hazards and toxic
27 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
28 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and

1 brings this enforcement action in the public interest pursuant to Health & Safety Code
2 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
3 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
4 resulted in significant public benefit, including the reformulation of thousands of products to
5 remove toxic chemicals and to make them safer. CEH also provides information to Californians
6 about the health risks associated with exposure to hazardous substances, where manufacturers and
7 other responsible parties fail to do so.

8 5. Defendant KHS AMERICA, INC. is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. Defendant KHS AMERICA, INC.
10 manufactures, distributes, and/or sells the Products for sale or use in California.

11 6. Defendant YAMAHA CORPORATION OF AMERICA is a person in the course
12 of doing business within the meaning of Health & Safety Code §25249.11. Defendant
13 YAMAHA CORPORATION OF AMERICA manufactures, distributes, and/or sells the Products
14 for sale or use in California.

15 7. DOES 1 through 100 are each a person in the course of doing business within the
16 meaning of Health & Safety Code §25249.11. DOES 1 through 100 manufacture, distribute, or
17 sell the Products for sale or use in California.

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

22 9. The defendants identified in paragraphs 5 and 6 and DOES 1 through 100 are
23 collectively referred to herein as “Defendants.”

24 **JURISDICTION AND VENUE**

25 10. The Court has jurisdiction over this action pursuant to Health & Safety Code
26 §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
27 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
28 other trial courts.

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

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

9 **BACKGROUND FACTS**

10 13. The People of the State of California have declared by initiative under Proposition
11 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
12 other reproductive harm.” Proposition 65, §1(b).

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

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

21 15. On February 27, 1987, the State of California officially listed lead as a chemical
22 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant
23 under three subcategories: “developmental reproductive toxicity,” which means harm to the
24 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive
25 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27
26 Cal. Code Regs. (“C.C.R.”) §27001(c). On February 27, 1988, one year after it was listed as a
27 chemical known to cause reproductive toxicity, lead became subject to the clear and reasonable
28

1 warning requirement regarding reproductive toxicants under Proposition 65. *Id.*; Health & Safety
2 Code §25249.10(b).

3 16. On October 1, 1992, the State of California officially listed lead and lead
4 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
5 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
6 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
7 §27001(b); Health & Safety Code §25249.10(b).

8 17. There is no safe level of exposure to Lead and even minute amounts of Lead have
9 been proven harmful to children and adults. *See, e.g.*, Report of the Advisory Committee on
10 Childhood Lead Poisoning Prevention of the U.S. Centers for Disease Control and Prevention,
11 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January
12 4, 2012. A study performed by the California Office of Environmental Health Hazard
13 Assessment determined that exposures to Lead even at levels previously considered safe have
14 now been shown to cause adverse health effects, including reduced cognitive ability and
15 significant diminution of intellectual potential. Carlisle, J., *et al.*, “A Blood Lead Benchmark for
16 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science & Health*,
17 44, 2009. This conclusion is based on a meta-study of 1,333 children who participated in seven
18 international studies. *See* Lanphear, B., *et al.*, “Low-Level Environmental Lead Exposure and
19 Children’s Intellectual Function: An International Pooled Analysis,” *Environmental Health*
20 *Perspectives*, 113:7, 2005.

21 18. Young children are especially susceptible to the toxic effects of Lead. Children
22 show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from Lead
23 exposure generally occur in children at lower blood Lead levels than in adults. Children absorb
24 and retain more Lead in proportion to their weight than do adults. Young children also show a
25 greater prevalence of iron deficiency, a condition that can increase gastrointestinal absorption of
26 Lead. The body accumulates Lead over a lifetime and releases it slowly, so even small doses
27 received in childhood, over time, can cause adverse health impacts, including but not limited to
28 reproductive toxicity, later in life. For example, in times of physiological stress, such as

1 pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
2 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

3 19. Lead exposures for pregnant women are also of particular concern in light of
4 evidence that even short term lead exposures *in utero* may have long-term harmful effects. *See,*
5 *e.g.,* Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant
6 Mental Development,” *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *et al.*,
7 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*
8 *Health Perspectives*, 114:5, 2006. Increased lead exposure during pregnancy has also been
9 shown to cause increased risk of premature birth and increased blood pressure in both the mother
10 during pregnancy and the child after birth. *See, e.g.,* Vigeh, M., *et al.*, “Blood Lead at Currently
11 Acceptable Levels May Cause Preterm Labour,” *Occupational & Environmental Medicine*,
12 68:231-234, 2010; Zhang, A., *et al.*, “Association Between Prenatal Lead Exposure and Blood
13 Pressure in Children,” *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, “Low-
14 Level Lead Exposure and Elevations in Blood Pressure During Pregnancy,” *Environmental*
15 *Health Perspectives*, 119:5, 2011.

16 20. Defendants’ Products contain sufficient quantities of Lead such that individuals,
17 including children and pregnant women, who use the Products are exposed to a significant
18 amount of Lead. The primary routes of exposure for the violations are direct ingestion when
19 consumers place the Products in their mouth while playing the musical instruments for which the
20 Products are intended to be used, and ingestion via hand-to-mouth contact after consumers touch
21 or handle the Products. These exposures occur in homes, workplaces, and everywhere else
22 throughout California where the Products are used.

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

25 22. Any person acting in the public interest has standing to enforce violations of
26 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
27 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
28 within such time. Health & Safety Code §25249.7(d).

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

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

24 25. None of the public prosecutors with the authority to prosecute violations of
25 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
26 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s
27 Notices regarding Lead in the Products.
28

1 26. Defendants both know and intend that individuals, including children and pregnant
2 women, will use the Products, thus exposing them to Lead.

3 27. Nevertheless, Defendants continue to expose consumers, including children and
4 pregnant women, to Lead without prior clear and reasonable warnings regarding the carcinogenic
5 or reproductive hazards of Lead.

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

8 29. Any person “violating or threatening to violate” Proposition 65 may be enjoined in
9 any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to violate” is
10 defined to mean “to create a condition in which there is a substantial probability that a violation
11 will occur.” *Id.* §25249.11(e). Proposition 65 provides for civil penalties not to exceed \$2,500
12 per day for each violation of Proposition 65. *Id.* §25249.7(b)(1).

13 **FIRST CAUSE OF ACTION**
14 **(Violations of Health & Safety Code §25249.6)**

15 30. CEH realleges and incorporates by reference as if specifically set forth herein
16 Paragraphs 1 through 29, inclusive.

17 31. By placing the Products into the stream of commerce, each Defendant is a person
18 in the course of doing business within the meaning of Health & Safety Code §25249.11.

19 32. Lead is a chemical listed by the State of California as known to cause cancer, birth
20 defects, and other reproductive harm.

21 33. Defendants know that average use of their Products will expose users of these
22 Products to Lead. Defendants intend that their Products be used in a manner that results in
23 exposures to Lead from these Products.

24 34. Defendants have failed, and continue to fail, to provide clear and reasonable
25 warnings regarding the carcinogenicity and reproductive toxicity of Lead to consumers of their
26 Products.

27 35. By committing the acts alleged above, Defendants have at all times relevant to this
28 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Lead

1 without first giving clear and reasonable warnings to such individuals regarding the
2 carcinogenicity and reproductive toxicity of Lead.

3 **PRAYER FOR RELIEF**

4 CEH prays for judgment against Defendants as follows:

5 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
6 permanently enjoin Defendants from offering the Products for sale in California without either
7 reformulating the Products such that no Proposition 65 warnings are required or providing prior
8 clear and reasonable warnings, as CEH shall specify in further application to the Court;

9 2. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
10 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
11 Proposition 65 according to proof;

12 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants
13 to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by
14 Defendants, as CEH shall specify in further application to the Court;

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

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

18
19 Dated: May 31, 2024

Respectfully submitted,

20 LEXINGTON LAW GROUP, LLP

21 

22
23 Patrick Carey
24 Attorneys for Plaintiff
25 CENTER FOR ENVIRONMENTAL HEALTH