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CENTER FOR ENVIRONMENTAL HEALTH

**FILED**  
ALAMEDA COUNTY

JUN 13 2016

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

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

Plaintiff, )

v. )

SEE'S CANDY SHOPS, INC.; and DOES 1 )  
through 200, inclusive, )

Defendants. )

Case No. **RG 16019342**

**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 consumption of Defendants' lollypop candies (the  
10 "Products"). Consumers, including pregnant women and children, are exposed to Lead when  
11 they consume 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 and  
18 children, to Lead.

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

23 **PARTIES**

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



1 play and substantial justice.

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

4 **BACKGROUND FACTS**

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

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

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

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

25 15. On October 1, 1992, the State of California officially listed lead and lead  
26 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
27 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
28 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.

1 §27001(c); Health & Safety Code §25249.10(b).

2           16.     There is no safe level of exposure to Lead and even minute amounts of  
3 Lead have been proven harmful to children and adults. *See* Report of the Advisory Committee  
4 on Childhood Lead Poisoning Prevention of the Centers for Disease Control and Prevention,  
5 “Low Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January  
6 4, 2012. A study performed by the California Office of Environmental Health Hazard  
7 Assessment determined that exposures to Lead even at levels previously considered safe have  
8 now been shown to cause adverse health effects including reduced cognitive ability and  
9 significant diminution of intellectual potential. Carlisle, J., *et al.*, “A Blood Lead Benchmark for  
10 Assessing Risks from Childhood Lead Exposure,” *Journal of Environmental Science and Health*,  
11 44, 2009. This conclusion is based on a meta study of 1,333 children who participated in seven  
12 international studies. Lanphear, B., *et al.*, “Low-Level Environmental Lead Exposure and  
13 Children’s Intellectual Function: An International Pooled Analysis,” *Environmental Health*  
14 *Perspectives*, 113:7, 2005; *see also* Mazumdar, M., *et al.*, “Low-Level Environmental Lead  
15 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study,” *Environmental*  
16 *Health*, 10:24, 2011.

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

27           18.     Lead exposures for pregnant women are also of particular concern in light  
28 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.

1 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
2 Development," *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *et al.*, "Reduced  
3 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health  
4 Perspectives*, 114:5, 2006. Increased Lead exposure during pregnancy has also been shown to  
5 cause increased risk of premature birth and increased blood pressure in both the mother during  
6 pregnancy and the child after birth. Vigeh, M., *et al.*, "Blood Lead at Currently Acceptable  
7 Levels May Cause Preterm Labour," *Occupational Environmental Medicine*, 68:231-234, 2010;  
8 Zhang, A., *et al.*, "Association Between Prenatal Lead Exposure and Blood Pressure in  
9 Children," *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, "Low-Level Lead  
10 Exposure and Elevations in Blood Pressure During Pregnancy," *Environmental Health  
11 Perspectives*, 119:5, 2011.

12           19. The level of exposure to a chemical causing reproductive toxicity under  
13 Proposition 65 is determined by multiplying the level in question times the reasonably  
14 anticipated rate of exposure for an individual to a given medium. 27 C.C.R. §25821(b). For  
15 exposures to consumer products, the level of exposure is calculated using the reasonably  
16 anticipated rate of intake or exposure for average users of the consumer product. 27 C.C.R.  
17 §25821(c)(2). The rate of intake or exposure is based on data for use of a general category or  
18 categories of consumer products, such as the United States Department of Agriculture's  
19 ("USDA") Home Economic Research Report, "Foods Commonly Eaten by Individuals: Amount  
20 Per Day and Per Eating Occasion." *Ibid.* The USDA has issued two such reports of data  
21 compiled from the years 1977-1978 and 1989-1991.

22           20. The United States Food and Drug Administration ("FDA") has  
23 promulgated regulations that estimate serving sizes for a wide variety of food products based on  
24 national food consumption surveys such as the USDA's "Foods Commonly Eaten by Individuals:  
25 Amount Per Day and Per Eating Occasion." 21 C.F.R. §101.12. These regulations are designed  
26 to determine "the amount of food customarily consumed per eating occasion." 21 C.F.R.  
27 §101.12(a). The Products at issue are candies. FDA has determined that the standard single  
28 serving size for candy such as the Products is 40 grams per serving. 21 C.F.R. §101.12(b).

1 However, the Products weight 20 grams. Using the most conservative serving size for lollipops,  
2 the Products will expose an average consumer to a significant amount of Lead.

3 21. Defendants' Products contain sufficient quantities of Lead such that  
4 consumers, including pregnant women and children, who consume the Products are exposed to a  
5 significant amount of Lead. The primary route of exposure for the violations is direct ingestion  
6 when consumers eat the Products. These exposures occur in homes, workplaces and everywhere  
7 else throughout California where the products are consumed.

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

10 23. 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 24. 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 following  
19 information: (1) the name and address of each violator; (2) the statute violated; (3) the time  
20 period during which violations occurred; (4) specific descriptions of the violations, including (a)  
21 the routes of exposure to Lead from the Products, and (b) the specific type of Products sold and  
22 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 25. 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

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

9           26. None of the public prosecutors with the authority to prosecute violations  
10 of 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           27. Defendants both know and intend that individuals, including pregnant  
14 women and children, will consume the Products, thus exposing them to Lead.

15           28. 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           29. 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           30. 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.

28           31. As companies that manufacture, distribute and sell the Products to



1 California consumers, Defendants know or should know that the Products contain Lead and that  
2 individuals who consume the Products will be exposed to Lead. The Lead exposures to  
3 consumers who consume the Products are a natural and foreseeable consequence of Defendants'  
4 placing the Products into the stream of commerce.

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

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

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

15 **FIRST CAUSE OF ACTION**

16 **(Violations of the Health & Safety Code §25249.6)**

17 35. CEH realleges and incorporates by reference as if specifically set forth  
18 herein Paragraphs 1 through 34, inclusive.

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

21 37. Lead is a chemical listed by the State of California as known to cause  
22 cancer, birth defects and other reproductive harm.

23 38. Defendants know that average use of the Products will expose users of the  
24 Products to Lead. Defendants intend that the Products be used in a manner that results in  
25 exposures to Lead from the Products.

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

