

**STATE OF RHODE ISLAND  
PROVIDENCE, SC.**

**SUPERIOR COURT**

**STATE OF RHODE ISLAND; :  
PETER F. NERONHA, in his :  
capacity as Attorney General of the :  
STATE OF RHODE ISLAND; and :  
DR. NICOLE ALEXANDER-SCOTT, :  
in her capacity as Director, RHODE :  
ISLAND DEPARTMENT OF HEALTH :  
Plaintiffs, :**

**C.A. No. PC-2022-**

**v. :**

**MARK O'DAY and :  
DAVID BUDA :  
Defendants. :**

**COMPLAINT AND PETITION FOR ENFORCEMENT OF  
COMPLIANCE ORDER AND FOR DECLARATORY RELIEF**

**A. PRELIMINARY STATEMENT**

1. This matter arises as a result of Mark O'Day and David Buda's (hereinafter collectively "Defendants") failure to comply with a lead notice of violation that has, by operation of law, become a final compliance order ("Compliance Order") of the Rhode Island Department of Health ("RIDOH"). The Defendants own and/or operate a rental income property located at 52 Whitmarsh Street, Apartment A, in Providence, Rhode Island ("the property"). The RIDOH Compliance Order was issued after a child living in the property tested positive for an elevated blood lead level ("EBLL") and a RIDOH inspection found the presence of lead in violation of state law ("lead hazards") in the child's home.<sup>1</sup>

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<sup>1</sup> To safeguard the child's identity and protected health information this Complaint does not include the identity of the poisoned child or information that could enable an individual to surmise the identity of the poisoned child.

2. The Compliance Order became effective as a final agency order by operation of law following Defendants' failure to request an administrative hearing in response to a second notice of violation ("NOV") issued by RIDOH. *See* R.I. Gen. Laws § 23-24.6-23; 216 R.I. Code R. § 50-15-3.19.11.
3. The violations outlined in the NOV risk the health of the property's tenants, particularly children.
4. RIDOH is alerted by a certified lab when children test positive for lead poisoning during their routine pediatrician check-ups. Children with a blood lead level ("BLL") greater than or equal to 5 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ) are lead poisoned as defined by RIDOH regulations. 216 R.I. Code R. § 50-15-3.3(15). The higher a child's BLL, the more severe their lead poisoning
5. According to the CDC, no safe blood lead level has been identified; therefore, any level of lead in the blood is harmful to children. Lead exposure – even at low levels – damages the brain and nervous system, increases a child's risk of developing permanent learning disabilities, reduces concentration and attentiveness, slows growth and development, and causes behavioral problems that may extend into adulthood. Damage to a child's brain and nervous system from lead exposure can also cause future hearing and speech complications. Lead poisoning can affect nearly every system in the child's body.
6. Children are at the greatest risk of lead exposure in older homes that have lead paint. Children are most often exposed to lead paint when they place in their mouths objects or their own fingers that have lead particles or dust on them. Lead dust particles can come from the soil outside the home, from damaged paint inside the home, or from the

friction of lead-painted surfaces like windows or doors. Child lead poisonings are completely preventable with the removal of lead hazards. For this reason, the Rhode Island General Assembly enacted a statutory framework to ensure that lead hazards are remediated by property owners in this state.

7. In pertinent part, pursuant to R.I. Gen. Laws § 23-24.6-1 *et seq.*, when RIDOH is notified that a child has been lead poisoned, it will inspect the child’s home for lead hazards. If lead hazards are found, RIDOH will issue an NOV to the property owner with an order that the lead hazards be remediated within 30 days. If the property owner does not provide evidence that the lead hazards have been remediated, RIDOH will issue a second NOV. Should the property owner fail to comply with this second NOV within 30 days, the NOV becomes a final Compliance Order, and the Attorney General, after notifying in writing the property owner of their obligations under law and the potential penalties for continued violations, may bring a civil action to bring the property into compliance and seek other relief. *See* R.I. Gen. Laws § 23-24.6-23.

**B. PARTIES**

8. Peter F. Neronha is the Attorney General of the State of Rhode Island (“Attorney General”). The Attorney General is the State of Rhode Island’s chief law enforcement officer and is authorized to pursue this action by, among other sections of the General Laws of Rhode Island, those cited herein, and the *parens patriae* doctrine.
9. Dr. Nicole Alexander-Scott is the Director of RIDOH. RIDOH is authorized to pursue this action by various sections of the General Laws of Rhode Island cited herein.
10. Defendant Mark O’Day is an owner and/or operator of the property.
11. Defendant David Buda is also an owner and/or operator of the property.

**C. JURISDICTION**

12. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws §§ 8-2-13, 8-2-14, and 23-24.6-23(c)(1).
13. Personal jurisdiction over the Defendants in this case is properly conferred in this Court based on the Defendants' presence within the State of Rhode Island.
14. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

**D. FACTS**

15. The property is one of two units in a residential condominium. It was built in the year 1900.
16. Following a child's routine testing for lead poisoning by a health care provider, RIDOH received notice from a certified lab that a child who resided in the property had an elevated blood lead level.
17. In response to the child's lead poisoning, RIDOH conducted an inspection of the property.
18. The inspection found lead paint hazards in the bedrooms, including a child's bedroom, living room, dining room, pantries, kitchen, and bathroom.
19. The inspection also found exterior lead hazards in the soil surrounding the dwelling.
20. At the time of the child lead poisoning at the property, the property was owned and/or operated by the Defendants.
21. This was one of three lead poisonings at the property. At least two additional children have been lead poisoned at the property in the years since the Defendants took ownership.

22. After the first child's poisoning, and upon identifying lead hazards at the property, RIDOH issued an NOV to the Defendants. After Defendants failed to fully comply with the first NOV, RIDOH issued a second NOV.
23. Both the first NOV and second NOV for the property allege violations of the following laws:
- a. Lead Poisoning Prevention Act (R.I. Gen. Laws § 23-24.6);
  - b. Rules and Regulations for Lead Poisoning Prevention (216 R.I. Code R. § 50-15-3); and the
  - c. Housing Maintenance and Occupancy Code (R.I. Gen. Laws § 45-24.3).
24. Within thirty (30) days of receipt of the second NOV, Defendants were ordered to correct the outstanding violations through a licensed lead contractor or request an administrative hearing to contest the issuance of the second NOV. They failed to do so.
25. *To date, Defendants have failed to fully comply with the requirements of the above-mentioned NOVs, even as Defendants' tenants, if any, may have been exposed to serious lead hazards. This failure to comply constitutes a significant environmental and health hazard to any tenants of the property, as well as the general public.*

**COUNT I**  
**(Violation of State Lead Poisoning Prevention Laws)**

26. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 25, above, as if set forth in full.
27. Pursuant to R.I. Gen. Laws § 23-24.6-17 of the Rhode Island Lead Poisoning Prevention Act, owners of residential rental units are required to remediate all lead hazards upon notification by RIDOH.

28. After Defendants received the first NOV, they had thirty (30) days to correct the lead hazards. Defendants failed to do so, and thus have been non-compliant with regard to the property for more than two years as of the date of the filing of this Complaint.
29. *Wherefore*, Plaintiffs seek a declaration, pursuant to R.I. Gen. Laws § 9-30-1, that Defendants have violated the Lead Poisoning Prevention Act, R.I. Gen. Laws § 23-24.6-1 *et seq.*, with regard to lead hazard violations that exist at the property.

**COUNT II**  
**(Penalties for Violations)**

30. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 29 above, as if set forth in full.
31. Pursuant to R.I. Gen. Laws § 23-24.6-23(c)(1) (the Lead Poisoning Prevention Act), the Attorney General’s Office has the power to initiate a civil cause of action and to impose “penalties and fines, as appropriate.” Additionally, pursuant to R.I. Gen. Laws § 42-9.1-2(a)(5), the Attorney General’s Office has the authority to “take all necessary and appropriate action, including but not limited to public education, legislative advocacy, and where authorized by law to institute formal legal action, to secure and insure compliance with the provisions of title[] 23,” including the Lead Poisoning Prevention Act of Chapter 24.6, Title 23.
32. This Honorable Court may assess such penalties and fines up to \$5000 per day that the lead hazard violations have existed in the property. *See* R.I. Gen. Laws § 23-24.6-27; RIDOH Penalty Matrix at 216 R.I. Code R. § 50-15-3.19.5(C).
33. *Wherefore*, this Honorable Court should assess penalties and fines up to that amount.

**COUNT III**  
**(Public Nuisance)**

34. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 33, above, as if set forth in full.
35. Pursuant to R.I. Gen. Laws § 23-24.6-23(d), following the issuance of a second NOV for failure to meet the applicable lead hazard reduction standards, “the unit may be considered abandoned and a public nuisance, which is a menace to public health.”
36. Additionally, pursuant to R.I. Gen. Laws § 10-1-1 *et seq.*, the Attorney General may bring an action in the name of the state to “abate the nuisance and to perpetually enjoin the person or persons maintaining the nuisance and any or all persons owning any legal or equitable interest in the place from further maintaining ... the nuisance either directly or indirectly.” Similarly, where, as here, the interests in the health and well-being of the People of the State of Rhode Island are implicated and there is harm and potential for further harm to a substantial segment of the Rhode Island population, the Attorney General possesses *parens patriae* standing to commence legal action against the Defendants to stop their unlawful practices.
37. *Wherefore*, this Honorable Court should enjoin the nuisance at the property.

**COUNT IV**  
**(Injunctive Relief)**

38. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 37, above, as if set forth in full.
39. Pursuant to R.I. Gen. Laws § 23-24.6-23(c)(1), the Attorney General’s Office has the power to initiate a civil action to compel compliance with the Lead Poisoning Prevention Act through injunctive relief.

40. Furthermore, pursuant to R.I. Gen. Laws § 10-1-3, when an alleged nuisance appears before the court, a temporary injunction may be issued “enjoining any and all respondents from further maintaining or permitting the nuisance[.]”

41. *Wherefore*, this Honorable Court should enjoin the nuisance at the property.

**COUNT V  
(Receivership)**

42. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 41, above, as if set forth in full.

43. Pursuant to R.I. Gen. Laws § 23-24.6-23(d), following the issuance of a second NOV for failure to meet the applicable lead hazard reduction standards, “the unit may be considered abandoned and a public nuisance, which is a menace to public health,” and the Attorney General and RIDOH may “request the court to appoint a receiver for the property, the court in such instances may specifically authorize the receiver to apply for loans, grants and other forms of funding necessary to correct lead hazards and meet lead hazard mitigation standards, and to hold the property for any period of time that the funding source may require to assure that the purposes of the funding have been met.”

44. *Wherefore*, if Defendants are unable or otherwise unwilling to assist in remediating the lead hazard violations at the property, this Honorable Court should appoint a receiver for the property.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, Peter F. Neronha, in his capacity as the Attorney General for the State of Rhode Island, and Dr. Nicole Alexander-Scott, in her capacity as Director of RIDOH,



hereby request that Judgement be entered in favor of the Plaintiffs and that they be granted the following relief:

- a. That the Defendants contract with a Lead Hazard Contractor licensed by RIDOH and correct any and all outstanding lead violations, making the property compliant with the applicable lead poisoning prevention laws;
- b. That the Defendants obtain documentation that the Lead Hazard Contractor has corrected any and all outstanding lead violations, making the property compliant with the applicable lead poisoning prevention laws;
- c. That the Defendants ensure that any tenants at the property are provided with, or compensated for, adequate housing accommodations during any period that they are unable to remain in their homes due to the remediation of the violations outlined above;
- d. That the Defendants ensure that any and all other housing code violations present at the property are repaired;
- e. Should Defendants be unable or otherwise unwilling to assist in obtaining the relief requested above, that this Honorable Court appoint a receiver for the property, and specifically authorize the receiver to apply for loans, grants and other forms of funding necessary to correct lead hazards and meet lead hazard mitigation standards, and to hold the property for any period of time that the funding source may require to assure that the purposes of the funding have been met;
- f. That this Honorable Court issue a declaratory judgment pursuant to R.I. Gen. Laws § 9-30-1 that the Defendants have violated the Lead Poisoning Prevention Act, R.I.

Gen. Laws § 23-24.6-1 *et seq.* with regard to lead hazard violations that exist at the property;

- g. That this Honorable Court assess penalties and fines as required by law; and
- h. Such other and further relief as this Court deems just and equitable in accordance with the facts of this case.

Respectfully submitted,

Plaintiffs,

STATE OF RHODE ISLAND;  
PETER F. NERONHA, in his  
capacity as Attorney General of the  
STATE OF RHODE ISLAND; and  
DR. NICOLE ALEXANDER-SCOTT,  
in her capacity as Director, RHODE  
ISLAND DEPARTMENT OF HEALTH

By:

/s/ Keith Hoffmann

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