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Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

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

Plaintiff, )

v. )

ASHLEY STEWART LTD.; CORNERSTONE )  
APPAREL, INC.; EXPRESS, LLC; LIMITED )  
STORES, LLC; MODE PLUS; SILHOUETTE )  
LLC; SILHOUETTE CLOTHING, INC.; )  
STEVEN MADDEN LTD.; STEVEN )  
MADDEN RETAIL, INC.; URBAN BRANDS, )  
INC.; VOLCOM, INC.; VOLCOM RETAIL, )  
INC.; THE WET SEAL, INC.; THE WET SEAL )  
RETAIL, INC.; and Defendant DOES 1 through )  
500, inclusive, )

Defendants. )

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 15 2010

CLERK OF THE SUPERIOR COURT

By: ERICA BAKER

Case No. 1010494289

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/or use of Defendants' belts made with leather, vinyl or  
10 imitation leather materials (the "Products"). Consumers, including pregnant women, are exposed  
11 to Lead when they touch or handle the Products.

12 2. Under California's Proposition 65, Health and 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, to  
18 Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and  
20 other people who come into contact with the Products to Lead, Defendants provide no warnings  
21 whatsoever about the carcinogenic or reproductive hazards associated with these Lead exposures.  
22 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety  
23 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  
28 State of California. CEH is a "person" within the meaning of Health & Safety Code

1 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &  
2 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy  
3 group that has prosecuted a large number of Proposition 65 cases in the public interest. These  
4 cases have resulted in significant public benefit, including the reformulation of thousands of  
5 products to remove toxic chemicals to make them safer. CEH also provides information to  
6 Californians about the health risks associated with exposure to hazardous substances, where  
7 manufacturers and other responsible parties fail to do so.

8           5. Defendant ASHLEY STEWART LTD. is a person in the course of doing  
9 business within the meaning of Health & Safety Code §25249.11. Ashley Stewart Ltd.  
10 manufactures, distributes and/or sells the Products for sale or use in California.

11           6. Defendant CORNERSTONE APPAREL, INC. is a person in the course of  
12 doing business within the meaning of Health & Safety Code §25249.11. Cornerstone Apparel,  
13 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

14           7. Defendant EXPRESS, LLC is a person in the course of doing business  
15 within the meaning of Health & Safety Code §25249.11. Express, LLC manufactures, distributes  
16 and/or sells the Products for sale or use in California.

17           8. Defendant LIMITED STORES, LLC is a person in the course of doing  
18 business within the meaning of Health & Safety Code §25249.11. Limited Stores, LLC  
19 manufactures, distributes and/or sells the Products for sale or use in California.

20           9. Defendant MODE PLUS is a person in the course of doing business within  
21 the meaning of Health & Safety Code §25249.11. Mode Plus manufactures, distributes and/or  
22 sells the Products for sale or use in California.

23           10. Defendant SILHOUETTE LLC is a person in the course of doing business  
24 within the meaning of Health & Safety Code §25249.11. Silhouette LLC manufactures,  
25 distributes and/or sells the Products for sale or use in California.

26           11. Defendant SILHOUETTE CLOTHING, INC. is a person in the course of  
27 doing business within the meaning of Health & Safety Code §25249.11. Silhouette Clothing,  
28 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

1           12. Defendant STEVEN MADDEN LTD. is a person in the course of doing  
2 business within the meaning of Health & Safety Code §25249.11. Steve Madden Ltd.  
3 manufactures, distributes and/or sells the Products for sale or use in California.

4           13. Defendant STEVEN MADDEN RETAIL, INC. is a person in the course  
5 of doing business within the meaning of Health & Safety Code §25249.11. Steve Madden Retail,  
6 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

7           14. Defendant URBAN BRANDS, INC. is a person in the course of doing  
8 business within the meaning of Health & Safety Code §25249.11. Urban Brands, Inc.  
9 manufactures, distributes and/or sells the Products for sale or use in California.

10           15. Defendant VOLCOM, INC. is a person in the course of doing business  
11 within the meaning of Health & Safety Code §25249.11. Volcom, Inc. manufactures, distributes  
12 and/or sells the Products for sale or use in California.

13           16. Defendant VOLCOM RETAIL, INC. is a person in the course of doing  
14 business within the meaning of Health & Safety Code §25249.11. Volcom Retail, Inc.  
15 manufactures, distributes and/or sells the Products for sale or use in California.

16           17. Defendant THE WET SEAL, INC. is a person in the course of doing  
17 business within the meaning of Health & Safety Code §25249.11. The Wet Seal, Inc.  
18 manufactures, distributes and/or sells the Products for sale or use in California.

19           18. Defendant THE WET SEAL RETAIL, INC. is a person in the course of  
20 doing business within the meaning of Health & Safety Code §25249.11. The Wet Seal Retail,  
21 Inc. manufactures, distributes and/or sells the Products for sale or use in California.

22           19. DOES 1 through 500 are each a person in the course of doing business  
23 within the meaning of Health & Safety Code §25249.11. DOES 1 through 500 manufacture,  
24 distribute and/or sell the Products for sale or use in California.

25           20. The true names of DOES 1 through 500 are unknown to CEH at this time.  
26 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

27           21. The defendants identified in paragraphs 5 through 18 and DOES 1 through  
28 500 are collectively referred to herein as "Defendants."

1 **JURISDICTION AND VENUE**

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

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

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

14 **BACKGROUND FACTS**

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

18 26. To effectuate this goal, Proposition 65 prohibits exposing people to  
19 chemicals listed by the State of California as known to cause cancer, birth defects or other  
20 reproductive harm without a “clear and reasonable warning” unless the business responsible for  
21 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6  
22 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  
25 state to cause cancer or reproductive toxicity without first giving  
clear and reasonable warning to such individual. . .

26 27. On February 27, 1987, the State of California officially listed lead as a  
27 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
28 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to

1 the developing fetus, "female reproductive toxicity," which means harm to the female  
2 reproductive system, and "male reproductive toxicity," which means harm to the male  
3 reproductive system. 27 California Code of Regulations ("C.C.R.") §27001(c). On February 27,  
4 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead  
5 became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
6 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

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

12 29. Some of the Products are designed for and marketed to children. Young  
13 children are also exposed to Lead from the Products when they touch or play with Products that  
14 are owned or used by their parents or caretakers. In addition, young children are exposed to Lead  
15 from the Products when they touch their hands to their mouths after their hands have touched or  
16 handled the Products.

17 30. 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 31. There is no safe level of exposure to Lead and even minute amounts of  
28 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,

1 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the  
2 effect of childhood Lead exposure declared that even the smallest detectable amount of blood  
3 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,  
4 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and  
5 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed  
6 children into adulthood and found a sevenfold increase in the risk for developing a reading  
7 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,  
8 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low  
9 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*  
10 322:83-88, 1990.

11           32. Lead exposures for pregnant women are also of particular concern in light  
12 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.  
13 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
14 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced  
15 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health*  
16 *Perspectives* 114:5, 2006.

17           33. Lead is found in the fabric and/or material from which many of the  
18 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather  
19 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in  
20 the Products and in the chemicals used in the leather tanning process. Lead is also found in  
21 metallic components used on some of the Products.

22           34. Defendants' Products contain sufficient quantities of Lead such that  
23 consumers, including pregnant women and children, who touch and/or handle the Products are  
24 exposed to Lead through the average use of the Products. The route of exposure for the  
25 violations is direct ingestion when consumers place the Products in their mouths; ingestion via  
26 hand-to-mouth contact after consumers touch or handle the Products; and dermal absorption  
27 directly through the skin when consumers take on or off and/or otherwise touch or handle the  
28 Products.

1           35.    No clear and reasonable warning is provided with the Products regarding  
2 the carcinogenic or reproductive hazards of Lead.

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

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

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



1 counsel and the facts, studies or other data reviewed by such persons.

2 39. None of the public prosecutors with the authority to prosecute violations  
3 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
4 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in the  
5 Notice.

6 40. Defendants both know and intend that individuals, including pregnant  
7 women and children, will touch and/or handle the Products, thus exposing them to Lead.

8 41. Under Proposition 65, an exposure is “knowing” where the party  
9 responsible for such exposure has:

10 knowledge of the fact that a[n] . . . exposure to a chemical listed  
11 pursuant to [Health and Safety Code §25249.8(a)] is occurring. No  
12 knowledge that the . . . exposure is unlawful is required.

13 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
14 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
15 §12201).

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

18 43. Nevertheless, Defendants continue to expose consumers, including  
19 pregnant women and children, to Lead without prior clear and reasonable warnings regarding the  
20 carcinogenic and/or reproductive hazards of Lead.

21 44. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
22 prior to filing this complaint.

23 45. Any person “violating or threatening to violate” Proposition 65 may be  
24 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to  
25 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
26 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil  
27 penalties not to exceed \$2,500 per day for each violation of Proposition 65.  
28

1 **FIRST CAUSE OF ACTION**

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

3 46. CEH realleges and incorporates by reference as if specifically set forth  
4 herein Paragraphs 1 through 45, inclusive.

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

7 48. Lead is a chemical listed by the State of California as known to cause  
8 cancer and birth defects or other reproductive harm.

9 49. Defendants know that average use of the Products will expose users of the  
10 Products to Lead. Defendants intend that the Products be used in a manner that results in users  
11 of the Products being exposed to Lead contained in the Products.

12 50. The Defendants have failed, and continue to fail, to provide prior clear and  
13 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of  
14 the Products.

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

19 Wherefore, CEH prays judgment against the Defendants, as set forth hereafter.

20 **PRAAYER FOR RELIEF**

21 Wherefore, CEH prays for judgment against Defendants as follows:

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

25 2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
26 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
27 California with sufficient quantities of Lead such that users of the Products are exposed to a  
28 "significant amount" of Lead under Proposition 65 without providing prior clear and reasonable

1 warnings, as CEH shall specify in further application to the Court;

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

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

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

9  
10 Dated: January 15, 2010

Respectfully submitted,

11 LEXINGTON LAW GROUP

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14 Eric S. Somers  
15 Attorneys for Plaintiff  
16 CENTER FOR ENVIRONMENTAL HEALTH  
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