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CENTER FOR ENVIRONMENTAL HEALTH

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10  
11

12 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
13 )  
Plaintiff, )  
14 )  
v. )  
15 )  
LULU NYC LLC, *et al.*, and Defendant DOES 1 )  
16 through 500, inclusive, )  
17 )  
Defendants. )

Lead Case No. RG 09-459448

[Consolidated with Case Nos. RG 10-494289; RG 10-494513; RG 10-494517; RG 11-598595; RG 11-598596; and RG 11-603764]

**FIRST AMENDED COMPLAINT-  
CENTER FOR ENVIRONMENTAL  
HEALTH V. BIOWORLD  
MERCHANDISING, INC., CASE NO.  
RG 11-598596**

18 CENTER FOR ENVIRONMENTAL HEALTH, )  
19 a non-profit corporation, )  
20 )  
Plaintiff, )  
21 )  
v. )  
22 )  
BIOWORLD MERCHANDISING, INC., *et al.*, )  
23 and Defendant DOES 1 through 500, inclusive, )  
24 )  
Defendants. )

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

(Other)

ENDORSED  
FILED  
ALAMEDA COUNTY

APR 12 2012

CLERK OF THE SUPERIOR COURT  
By PTUNG HAN Deputy

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 First Amended Complaint seeks to remedy Defendants' continuing  
6 failure to warn individuals in California that they are being exposed to lead and lead compounds  
7 (collectively, "Lead"), chemicals known to the State of California to cause cancer and birth  
8 defects and other reproductive harm. Such exposures have occurred, and continue to occur,  
9 through the manufacture, distribution, sale and/or use of Defendants' wallets, handbags, purses  
10 and clutches made with leather, vinyl or imitation leather materials (the "Products"). Consumers,  
11 including pregnant women, are exposed to Lead when they use, 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 6PM.COM, LLC is a person in the course of doing business  
9 within the meaning of Health & Safety Code §25249.11. 6pm.com, LLC manufactures,  
10 distributes and/or sells the Products for sale or use in California.

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

14           7. Defendant AMERICAN APPAREL, INC. is a person in the course of  
15 doing business within the meaning of Health & Safety Code §25249.11. American Apparel, Inc.  
16 manufactures, distributes and/or sells the Products for sale or use in California.

17           8. Defendant AMERICAN APPAREL (USA), LLC is a person in the course  
18 of doing business within the meaning of Health & Safety Code §25249.11. American Apparel  
19 (USA), LLC manufactures, distributes and/or sells the Products for sale or use in California.

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

23           10. Defendant BECARRO INTERNATIONAL CORPORATION is a person  
24 in the course of doing business within the meaning of Health & Safety Code §25249.11. Becarro  
25 International Corporation manufactures, distributes and/or sells the Products for sale or use in  
26 California.

27           11. Defendant BECARRO INTERNATIONAL, LTD. is a person in the course  
28 of doing business within the meaning of Health & Safety Code §25249.11. Becarro

1 International, Ltd. manufactures, distributes and/or sells the Products for sale or use in California.

2 12. Defendant BIOWORLD MERCHANDISING, INC. is a person in the  
3 course of doing business within the meaning of Health & Safety Code §25249.11. Bioworld  
4 Merchandising, Inc. manufactures, distributes and/or sells the Products for sale or use in  
5 California.

6 13. Defendant CHICO'S FAS, INC. is a person in the course of doing  
7 business within the meaning of Health & Safety Code §25249.11. Chico's FAS, Inc.  
8 manufactures, distributes and/or sells the Products for sale or use in California.

9 14. Defendant FRANCESCA'S COLLECTIONS, INC. is a person in the  
10 course of doing business within the meaning of Health & Safety Code §25249.11. Francesca's  
11 Collections, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

12 15. Defendant GENERAL TRADING GROUP, INC. is a person in the course  
13 of doing business within the meaning of Health & Safety Code §25249.11. General Trading  
14 Group, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

15 16. Defendant HIGH ACCESSORIES, INC. is a person in the course of doing  
16 business within the meaning of Health & Safety Code §25249.11. High Accessories, Inc.  
17 manufactures, distributes and/or sells the Products for sale or use in California.

18 17. Defendant HOT TOPIC, INC. is a person in the course of doing business  
19 within the meaning of Health & Safety Code §25249.11. Hot Topic, Inc. manufactures,  
20 distributes and/or sells the Products for sale or use in California.

21 18. Defendant HOT TOPIC MERCHANDISING, INC. is a person in the  
22 course of doing business within the meaning of Health & Safety Code §25249.11. Hot Topic  
23 Merchandising, Inc. manufactures, distributes and/or sells the Products for sale or use in  
24 California.

25 19. Defendant HURLEY INTERNATIONAL LLC is a person in the course of  
26 doing business within the meaning of Health & Safety Code §25249.11. Hurley International  
27 LLC manufactures, distributes and/or sells the Products for sale or use in California.

28 20. Defendant IRON FIST INTERNATIONAL, INC. is a person in the course

1 of doing business within the meaning of Health & Safety Code §25249.11. Iron Fist  
2 International, Inc. manufactures, distributes and/or sells the Products for sale or use in California.

3           21. Defendant JMAM, LLC DBA JOAN RIVERS WORLDWIDE  
4 ENTERPRISES is a person in the course of doing business within the meaning of Health &  
5 Safety Code §25249.11. JMAM, LLC dba Joan Rivers Worldwide Enterprises manufactures,  
6 distributes and/or sells the Products for sale or use in California.

7           22. Defendant LOVE CULTURE, INC. is a person in the course of doing  
8 business within the meaning of Health & Safety Code §25249.11. Love Culture, Inc.  
9 manufactures, distributes and/or sells the Products for sale or use in California.

10           23. Defendant LOVE MY SHOES, INC. is a person in the course of doing  
11 business within the meaning of Health & Safety Code §25249.11. Love My Shoes, Inc.  
12 manufactures, distributes and/or sells the Products for sale or use in California.

13           24. Defendant LOVE MY SHOES OF SAYVILLE, INC. is a person in the  
14 course of doing business within the meaning of Health & Safety Code §25249.11. Love My  
15 Shoes of Sayville, Inc. manufactures, distributes and/or sells the Products for sale or use in  
16 California.

17           25. Defendant MARSHALLS OF CA, LLC is a person in the course of doing  
18 business within the meaning of Health & Safety Code §25249.11. Marshalls of CA, LLC  
19 manufactures, distributes and/or sells the Products for sale or use in California.

20           26. Defendant MARSHALLS OF MA, INC. is a person in the course of doing  
21 business within the meaning of Health & Safety Code §25249.11. Marshalls of MA, Inc.  
22 manufactures, distributes and/or sells the Products for sale or use in California.

23           27. Defendant PINK ICE, INC. is a person in the course of doing business  
24 within the meaning of Health & Safety Code §25249.11. Pink Ice, Inc. manufactures, distributes  
25 and/or sells the Products for sale or use in California.

26           28. Defendant SPENCER GIFTS, LLC is a person in the course of doing  
27 business within the meaning of Health & Safety Code §25249.11. Spencer Gifts, LLC  
28 manufactures, distributes and/or sells the Products for sale or use in California.



1 chemicals listed by the State of California as known to cause cancer, birth defects or other  
2 reproductive harm without a “clear and reasonable warning” unless the business responsible for  
3 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6  
4 states, in pertinent part:

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

9           38.     On February 27, 1987, the State of California officially listed lead as a  
10           chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
11           toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
12           the developing fetus, “female reproductive toxicity,” which means harm to the female  
13           reproductive system, and “male reproductive toxicity,” which means harm to the male  
14           reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,  
15           1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead  
16           became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
17           under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

18           39.     On October 1, 1992, the State of California officially listed lead and lead  
19           compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
20           listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
21           and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
22           §27001(c); Health & Safety Code §25249.10(b).

23           40.     Some of the Products are designed for and marketed to children. Young  
24           children are also exposed to Lead from the Products when they touch or play with Products that  
25           are owned or used by their parents or caretakers. In addition, young children are exposed to Lead  
26           from the Products when they eat food that is stored or carried in the Products or touch or play  
27           with non-food items that are stored or carried in the Products. Additional childhood exposures to  
28           Lead occur when children touch their hands to their mouths after their hands have touched the  
29           Products or items stored or carried in the Products.

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

11           42.     There is no safe level of exposure to Lead and even minute amounts of  
12 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,  
13 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the  
14 effect of childhood Lead exposure declared that even the smallest detectable amount of blood  
15 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,  
16 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and  
17 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed  
18 children into adulthood and found a sevenfold increase in the risk for developing a reading  
19 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,  
20 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low  
21 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*  
22 322:83-88, 1990.

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



1           44.    Lead is found in the fabric and/or material from which many of the  
2 Products are made. Lead is found in the Products as a stabilizer in the vinyl or imitation leather  
3 materials, as a chemical ingredient in some of the dyes, paints and other coloring agents used in  
4 the Products and in the chemicals used in the leather tanning process. Lead is also found in the  
5 metallic components such as zippers and zipper pulls used on some of the Products.

6           45.    Defendants' Products contain sufficient quantities of Lead such that  
7 consumers, including pregnant women and children, who use, touch and/or handle the Products  
8 are exposed to Lead through the average use of the Products. The route of exposure for the  
9 violations is direct ingestion when consumers place the Products or items that have been stored  
10 in the Products in their mouths; ingestion via hand-to-mouth contact after consumers use, touch  
11 and/or handle the Products or items that have been stored in the Products; and dermal absorption  
12 directly through the skin when consumers use, touch and/or handle the Products or items that  
13 have been stored in the Products.

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

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

28           48.    CEH also sent a Certificate of Merit for each Notice to the California

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

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

17           50. Defendants both know and intend that individuals, including pregnant  
18 women and children, will use, touch and/or handle the Products, thus exposing them to Lead.

19           51. Under Proposition 65, an exposure is “knowing” where the party  
20 responsible for such exposure has:

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

24 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
25 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
26 §12201).

27           52. No clear and reasonable warning is provided with the Products regarding  
28 the carcinogenic or reproductive hazards of Lead.

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

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

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

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

13 **FIRST CAUSE OF ACTION**

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

15 57. CEH realleges and incorporates by reference as if specifically set forth  
16 herein Paragraphs 1 through 56, inclusive.

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

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

21 60. Defendants know that average use of the Products will expose users of the  
22 Products to Lead. Defendants intend that the Products be used in a manner that results in users  
23 of the Products being exposed to Lead contained in the Products.

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

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

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

3 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

4 **PRAYER FOR RELIEF**

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

6 1: That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil  
7 penalties against each Defendant in the amount of \$2,500 per day for each violation of  
8 Proposition 65 according to proof;

9 2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
10 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
11 California without providing prior clear and reasonable warnings, as CEH shall specify in further  
12 application to the Court;

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

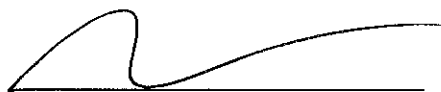
16 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other  
17 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

20  
21 Dated: April 11, 2012

Respectfully submitted,

22 LEXINGTON LAW GROUP

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26 Howard Hirsch  
27 Attorneys for Plaintiff  
28 CENTER FOR ENVIRONMENTAL HEALTH