

ENDORSED
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By K. Ghee Deputy

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CENTER FOR ENVIRONMENTAL HEALTH

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

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

14 Plaintiff,)

15 v.)

16 ANGL, INC.; JASON DESIGN)
CORPORATION; KNS INTERNATIONAL,)
17 LLC; REPORT FOOTWEAR, INC.; SHOE)
SOURCE OF BIRMINGHAM, LLC; THE)
18 TOPLINE CORPORATION; WAL-MART)
STORES, INC.; WANTED SHOES, INC.;)
19 WESTWOOD FOOTWEAR CORPORATION;)
and DOES 1 through 700, inclusive,)

20 Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

Case No. RG13708572

**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 three types of fashion accessories: (i) wallets,
10 handbags, purses and clutches made with leather, vinyl or imitation leather materials
11 (collectively, “Handbags”); (ii) footwear made with leather, vinyl or imitation leather materials
12 (“Footwear”); and (iii) belts made with leather, vinyl or imitation leather materials (“Belts”).
13 Handbags, Footwear and Belts are collectively referred to herein as “Fashion Accessories.”
14 Individuals in California, including pregnant women and children, are exposed to Lead when
15 they wear, use, touch or handle Defendants’ Fashion Accessories.

16 2. Under California’s Proposition 65, Health & Safety Code §25249.5, *et*
17 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
18 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
19 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
20 introduce Fashion Accessories contaminated with significant quantities of Lead into the
21 California marketplace, exposing consumers of their Fashion Accessories, many of whom are
22 pregnant women and children, to Lead.

23 3. Despite the fact that Defendants expose pregnant women, children and
24 other people who come into contact with the Fashion Accessories to Lead, Defendants provide
25 no warnings whatsoever about the carcinogenic or reproductive hazards associated with these
26 Lead exposures. Defendants’ conduct thus violates the warning provision of Proposition 65.
27 Health & Safety Code §25249.6.

28

PARTIES

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2 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a
3 non-profit corporation dedicated to protecting the public from environmental health hazards and
4 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
5 State of California. CEH is a “person” within the meaning of Health & Safety Code
6 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
7 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
8 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
9 cases have resulted in significant public benefit, including the reformulation of thousands of
10 products to remove toxic chemicals to make them safer. CEH also provides information to
11 Californians about the health risks associated with exposure to hazardous substances, where
12 manufacturers and other responsible parties fail to do so.

13 5. Defendant ANGL, INC. is a person in the course of doing business within
14 the meaning of Health & Safety Code §25249.11. ANGL, Inc. manufactures, distributes and/or
15 sells Handbags and Belts for sale or use in California.

16 6. Defendant JASON DESIGN CORPORATION is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. Jason Design
18 Corporation manufactures, distributes and/or sells Handbags and Belts for sale or use in
19 California.

20 7. Defendant KNS INTERNATIONAL, LLC is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. KNS International, LLC
22 manufactures, distributes and/or sells Belts and Footwear for sale or use in California.

23 8. Defendant REPORT FOOTWEAR, INC. is a person in the course of doing
24 business within the meaning of Health & Safety Code §25249.11. Report Footwear, Inc.
25 manufactures, distributes and/or sells Footwear for sale or use in California.

26 9. Defendant SHOE SOURCE OF BIRMINGHAM, LLC is a person in the
27 course of doing business within the meaning of Health & Safety Code §25249.11. Shoe Source
28 of Birmingham, LLC manufactures, distributes and/or sells Footwear for sale or use in

1 California.

2 10. Defendant THE TOPLINE CORPORATION is a person in the course of
3 doing business within the meaning of Health & Safety Code §25249.11. The Topline
4 Corporation manufactures, distributes and/or sells Footwear for sale or use in California.

5 11. Defendant WAL-MART STORES, INC. is a person in the course of doing
6 business within the meaning of Health & Safety Code §25249.11. Wal-Mart Stores, Inc.
7 manufactures, distributes and/or sells Belts and Footwear for sale or use in California.

8 12. Defendant WANTED SHOES, INC. is a person in the course of doing
9 business within the meaning of Health & Safety Code §25249.11. Wanted Shoes, Inc.
10 manufactures, distributes and/or sells Footwear for sale or use in California.

11 13. Defendant WESTWOOD FOOTWEAR CORPORATION is a person in
12 the course of doing business within the meaning of Health & Safety Code §25249.11. Westwood
13 Footwear Corporation manufactures, distributes and/or sells Footwear for sale or use in
14 California.

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

18 15. DOES 101 through 200 are each a person in the course of doing business
19 within the meaning of Health & Safety Code §25249.11. DOES 101 through 200 manufacture,
20 distribute and/or sell Footwear for sale or use in California.

21 16. DOES 201 through 300 are each a person in the course of doing business
22 within the meaning of Health & Safety Code §25249.11. DOES 201 through 300 manufacture,
23 distribute and/or sell Belts for sale or use in California.

24 17. DOES 301 through 400 are each a person in the course of doing business
25 within the meaning of Health & Safety Code §25249.11. DOES 301 through 400 manufacture,
26 distribute and/or sell Handbags and Footwear for sale or use in California.

27 18. DOES 401 through 500 are each a person in the course of doing business
28 within the meaning of Health & Safety Code §25249.11. DOES 401 through 500 manufacture,

1 distribute and/or sell Handbags and Belts for sale or use in California.

2 19. DOES 501 through 600 are each a person in the course of doing business
3 within the meaning of Health & Safety Code §25249.11. DOES 501 through 600 manufacture,
4 distribute and/or sell Footwear and Belts for sale or use in California.

5 20. DOES 601 through 700 are each a person in the course of doing business
6 within the meaning of Health & Safety Code §25249.11. DOES 601 through 700 manufacture,
7 distribute and/or sell Handbags, Footwear and Belts for sale or use in California.

8 21. The true names of DOES 1 through 700 are unknown to CEH at this time.
9 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

10 22. The defendants identified in paragraphs 5 through 13 and DOES 1 through
11 700 are collectively referred to herein as “Defendants.”

12 **JURISDICTION AND VENUE**

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

17 24. This Court has jurisdiction over Defendants because each is a business
18 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
19 intentionally avails itself of the California market through the sale, marketing or use of Fashion
20 Accessories in California and/or by having such other contacts with California so as to render the
21 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
22 play and substantial justice.

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

25 **BACKGROUND FACTS**

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

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

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

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

19 29. On October 1, 1992, the State of California officially listed lead and lead
20 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
21 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
22 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
23 §27001(c); Health & Safety Code §25249.10(b).

24 30. Young children are especially susceptible to the toxic effects of Lead.
25 Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from
26 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
27 absorb and retain more Lead in proportion to their weight than do adults. Young children also
28 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even

1 small doses received in childhood, over time, can cause adverse health impacts, including but not
2 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
3 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
4 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

5 31. There is no safe level of exposure to Lead and even minute amounts of
6 Lead exposure have been shown to permanently reduce mental capacity. Studies have repeatedly
7 concluded that concentrations of Lead in children’s blood previously deemed acceptable can
8 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, “Intellectual Impairment in Children
9 with Blood Lead Concentrations below 10 ug per Deciliter,” *New England Journal of Medicine*
10 348:16, 2003. Another recent study found that childhood Lead exposure predicts intellectual
11 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead
12 concentrations from childhood. Mazumdar, M., *et al.*, “Low-Level Environmental Lead
13 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study,” *Environmental*
14 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, “Subclinical Lead Toxicity in U.S. Children
15 and Adolescents,” *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the
16 smallest detectable amount of blood Lead levels in children can mean the difference between an
17 A or B grade in school).

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

24 33. The problem of Lead in Fashion Accessories is an industry-wide problem.
25 Lead is found in the fabric and/or material from which many Fashion Accessories are made.
26 Lead is found in Fashion Accessories as a stabilizer in the vinyl or imitation leather materials, as
27 a chemical ingredient in some of the dyes, paints and other coloring agents used in Fashion
28 Accessories and in the chemicals used in the leather tanning process. Lead is also found in the

1 metallic components such as zippers, zipper pulls and buckles used on some Fashion
2 Accessories.

3 34. Defendants' Fashion Accessories contain sufficient quantities of Lead
4 such that individuals, including pregnant women and children, who wear, use, touch and/or
5 handle Fashion Accessories are exposed to Lead through the average use of Fashion Accessories.
6 Consumer exposures to Lead occur through ingestion via hand-to-mouth contact after consumers
7 touch and/or handle Fashion Accessories and dermal absorption directly through the skin when
8 consumers wear, touch and/or handle Fashion Accessories.

9 35. Some Fashion Accessories are designed for and marketed to children.
10 Young children are also exposed to Lead from Fashion Accessories when they touch or play with
11 Fashion Accessories that are owned or used by their parents or caretakers. In addition, young
12 children are exposed to Lead from Handbags when they eat food that is stored or carried in
13 Handbags or touch or play with non-food items that are stored or carried in Handbags.
14 Additional childhood exposures to Lead occur when children touch their hands to their mouths
15 after their hands have touched Fashion Accessories or items stored or carried in Handbags.

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

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

1 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

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

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

19 40. Defendants both know and intend that consumers in California, including
20 pregnant women and children, will wear, use, touch and/or handle Fashion Accessories, thus
21 exposing them to Lead.

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

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

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

1 §12201).

2 42. No clear and reasonable warning is provided with Fashion Accessories
3 regarding the carcinogenic or reproductive hazards of Lead.

4 43. Defendants have been informed of the Lead in their Fashion Accessories
5 by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by
6 CEH.

7 44. Defendants also have constructive knowledge that their Fashion
8 Accessories contain Lead due to the widespread media coverage concerning the problem of Lead
9 in consumer products in general and in Fashion Accessories in particular. The industry-wide
10 problem of Lead in Fashion Accessories has been the subject of extensive media coverage,
11 including articles in national newspapers and stories on nationally televised programs such as
12 “Good Morning America.”

13 45. As companies that manufacture, import, distribute and/or sell Fashion
14 Accessories for use in the California marketplace, Defendants know or should know that Fashion
15 Accessories contain Lead and that individuals who use Fashion Accessories will be exposed to
16 Lead. The Lead exposures to consumers who use the Fashion Accessories are a natural and
17 foreseeable consequence of Defendants’ placing the Fashion Accessories into the stream of
18 commerce.

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

22 47. CEH has engaged in good-faith efforts to resolve the claims alleged herein
23 prior to filing this Complaint.

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

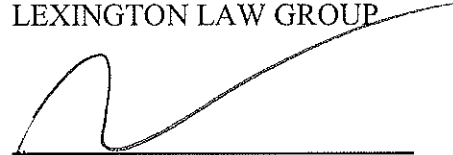
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5. That the Court grant such other and further relief as may be just and proper.

Dated: December 31, 2013

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH