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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

APR 24 2014

CLERK OF THE SUPERIOR COURT

By Anita Dhir Deputy

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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 MIZ MOOZ, INC.; TILLY'S, INC.; UNISA)
17 AMERICA, INC.; WORLD OF JEANS &)
TOPS; YOKI FASHION INTERNATIONAL,)
18 LLC; and DOES 1 through 700, inclusive,)

19 Defendants.)
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RG 14722783
Case No. _____

**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.

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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 MIZ MOOZ, INC. is a person in the course of doing business
14 within the meaning of Health & Safety Code §25249.11. Miz Mooz, Inc. manufactures,
15 distributes and/or sells Footwear for sale or use in California.

16 6. Defendant TILLY’S, INC. is a person in the course of doing business
17 within the meaning of Health & Safety Code §25249.11. Tilly’s, Inc. manufactures, distributes
18 and/or sells Footwear for sale or use in California.

19 7. Defendant UNISA AMERICA, INC. is a person in the course of doing
20 business within the meaning of Health & Safety Code §25249.11. Unisa America, Inc.
21 manufactures, distributes and/or sells Footwear for sale or use in California.

22 8. Defendant WORLD OF JEANS & TOPS is a person in the course of
23 doing business within the meaning of Health & Safety Code §25249.11. World of Jeans & Tops
24 manufactures, distributes and/or sells Footwear for sale or use in California.

25 9. Defendant YOKI FASHION INTERNATIONAL, LLC is a person in the
26 course of doing business within the meaning of Health & Safety Code §25249.11. Yoki Fashion
27 International, LLC manufactures, distributes and/or sells Handbags for sale or use in California.

28 10. DOES 1 through 100 are each a person in the course of doing business

1 within the meaning of Health & Safety Code §25249.11. DOES 1 through 100 manufacture,
2 distribute and/or sell Handbags for sale or use in California.

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

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

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

12 14. DOES 401 through 500 are each a person in the course of doing business
13 within the meaning of Health & Safety Code §25249.11. DOES 401 through 500 manufacture,
14 distribute and/or sell Handbags and Belts for sale or use in California.

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

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

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

23 18. The defendants identified in paragraphs 5 through 9 and DOES 1 through
24 700 are collectively referred to herein as "Defendants."

25 **JURISDICTION AND VENUE**

26 19. The Court has jurisdiction over this action pursuant to Health & Safety
27 Code §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
28 to California Constitution Article VI, Section 10, because this case is a cause not given by statute

1 to other trial courts.

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

8 21. Venue is proper in the Alameda Superior Court because one or more of the
9 violations arise in the County of Alameda.

10 **BACKGROUND FACTS**

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

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

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

22 24. On February 27, 1987, the State of California officially listed lead as a
23 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
24 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
25 the developing fetus, “female reproductive toxicity,” which means harm to the female
26 reproductive system, and “male reproductive toxicity,” which means harm to the male
27 reproductive system. 27 Cal. Code Regs. (“C.C.R.”) §27001(c). On February 27, 1988, one year
28 after it was listed as a chemical known to cause reproductive toxicity, lead became subject to the

1 clear and reasonable warning requirement regarding reproductive toxicants under Proposition 65.
2 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

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

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

18 27. There is no safe level of exposure to Lead and even minute amounts of
19 Lead exposure have been shown to permanently reduce mental capacity. Studies have repeatedly
20 concluded that concentrations of Lead in children's blood previously deemed acceptable can
21 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children
22 with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*
23 348:16, 2003. Another recent study found that childhood Lead exposure predicts intellectual
24 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead
25 concentrations from childhood. Mazumdar, M., *et al.*, "Low-Level Environmental Lead
26 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study," *Environmental*
27 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, "Subclinical Lead Toxicity in U.S. Children
28 and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the

1 smallest detectable amount of blood Lead levels in children can mean the difference between an
2 A or B grade in school).

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

9 29. The problem of Lead in Fashion Accessories is an industry-wide problem.
10 Lead is found in the fabric and/or material from which many Fashion Accessories are made.
11 Lead is found in Fashion Accessories as a stabilizer in the vinyl or imitation leather materials, as
12 a chemical ingredient in some of the dyes, paints and other coloring agents used in Fashion
13 Accessories and in the chemicals used in the leather tanning process. Lead is also found in the
14 metallic components such as zippers, zipper pulls and buckles used on some Fashion
15 Accessories.

16 30. Defendants' Fashion Accessories contain sufficient quantities of Lead
17 such that individuals, including pregnant women and children, who wear, use, touch and/or
18 handle Fashion Accessories are exposed to Lead through the average use of Fashion Accessories.
19 Consumer exposures to Lead occur through ingestion via hand-to-mouth contact after consumers
20 touch and/or handle Fashion Accessories and dermal absorption directly through the skin when
21 consumers wear, touch and/or handle Fashion Accessories.

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

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

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

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

28 35. None of the public prosecutors with the authority to prosecute violations

1 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
2 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in the
3 Notice.

4 36. Defendants both know and intend that consumers in California, including
5 pregnant women and children, will wear, use, touch and/or handle Fashion Accessories, thus
6 exposing them to Lead.

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

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

12 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
13 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
14 §12201).

15 38. No clear and reasonable warning is provided with Fashion Accessories
16 regarding the carcinogenic or reproductive hazards of Lead.

17 39. Defendants have been informed of the Lead in their Fashion Accessories
18 by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by
19 CEH.

20 40. Defendants also have constructive knowledge that their Fashion
21 Accessories contain Lead due to the widespread media coverage concerning the problem of Lead
22 in consumer products in general and in Fashion Accessories in particular. The industry-wide
23 problem of Lead in Fashion Accessories has been the subject of extensive media coverage,
24 including articles in national newspapers and stories on nationally televised programs such as
25 “Good Morning America.”

26 41. As companies that manufacture, import, distribute and/or sell Fashion
27 Accessories for use in the California marketplace, Defendants know or should know that Fashion
28 Accessories contain Lead and that individuals who use Fashion Accessories will be exposed to

1 Lead. The Lead exposures to consumers who use the Fashion Accessories are a natural and
2 foreseeable consequence of Defendants' placing the Fashion Accessories into the stream of
3 commerce.

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

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

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

14 **FIRST CAUSE OF ACTION**
15 **(Violations of the Health & Safety Code §25249.6)**
16 **(Against Handbag Defendants Only)**

17 45. CEH realleges and incorporates by reference as if specifically set forth
18 herein Paragraphs 1 through 44, inclusive.

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

21 47. By placing their Handbags into the stream of commerce, Defendant Yoki
22 Fashion International, LLC and DOES 1 through 100, 301 through 500 and 601 through 700
23 (collectively, the "Handbags Defendants") are each a person in the course of doing business
24 within the meaning of Health & Safety Code §25249.11.

25 48. Handbags Defendants know that average use of their Handbags will
26 expose users of Handbags to Lead. Handbags Defendants intend that their Handbags be used in a
27 manner that results in users of their Handbags being exposed to Lead contained therein.

28 49. Handbags Defendants have failed, and continue to fail, to provide prior

1 clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to
2 users of their Handbags.

3 50. By committing the acts alleged above, Handbag Defendants have at all
4 times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
5 individuals to Lead without first giving clear and reasonable warnings to such individuals
6 regarding the carcinogenicity and reproductive toxicity of Lead.

7 Wherefore, CEH prays for judgment against Handbag Defendants, as set forth
8 hereafter.

9 **SECOND CAUSE OF ACTION**
10 **(Violations of the Health & Safety Code §25249.6)**
11 **(Against Footwear Defendants Only)**

12 51. CEH realleges and incorporates by reference as if specifically set forth
13 herein Paragraphs 1 through 50, inclusive.

14 52. Lead is a chemical listed by the State of California as known to cause
15 cancer and birth defects or other reproductive harm.

16 53. By placing their Footwear into the stream of commerce, Defendants Miz
17 Mooz, Inc., Tilly's, Inc., Unisa America, Inc., World of Jeans & Tops, and DOES 101 through
18 200, 301 through 400 and 501 through 700 (collectively, the "Footwear Defendants") are each a
19 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

20 54. Footwear Defendants know that average use of their Footwear will expose
21 users of their Footwear to Lead. Footwear Defendants intend that their Footwear be used in a
22 manner that results in users of their Footwear being exposed to Lead contained therein.

23 55. Footwear Defendants have failed, and continue to fail, to provide prior
24 clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to
25 users of their Footwear.

26 56. By committing the acts alleged above, Footwear Defendants have at all
27 times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
28 individuals to Lead without first giving clear and reasonable warnings to such individuals

1 regarding the carcinogenicity and reproductive toxicity of Lead.

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

4 **THIRD CAUSE OF ACTION**
5 **(Violations of the Health & Safety Code §25249.6)**
6 **(Against Belts Defendants Only)**

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

9 58. Lead is a chemical listed by the State of California as known to cause
10 cancer and birth defects or other reproductive harm.

11 59. By placing their Belts into the stream of commerce, Defendants DOES
12 201 through 300 and 401 through 700 (collectively, the "Belts Defendants") are each a person in
13 the course of doing business within the meaning of Health & Safety Code §25249.11.

14 60. Belts Defendants know that average use of their Belts will expose users of
15 their Belts to Lead. Belts Defendants intend that their Belts be used in a manner that results in
16 users of their Belts being exposed to Lead contained therein.

17 61. Belts Defendants have failed, and continue to fail, to provide prior clear
18 and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users
19 of their Belts.

20 62. By committing the acts alleged above, Belts Defendants have at all times
21 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
22 individuals to Lead without first giving clear and reasonable warnings to such individuals
23 regarding the carcinogenicity and reproductive toxicity of Lead.

24 Wherefore, CEH prays for judgment against Belts Defendants, as set forth
25 hereafter.

26 **PRAYER FOR RELIEF**

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

28 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil

1 penalties against each Defendant in the amount of \$2,500 per day for each violation of
2 Proposition 65 according to proof;

3 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
4 preliminarily and permanently enjoin Defendants from offering Fashion Accessories for sale in
5 California without providing prior clear and reasonable warnings, as CEH shall specify in further
6 application to the Court;

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

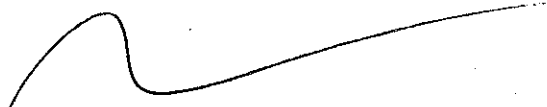
10 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
11 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

14
15 Dated: April 24, 2014

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH