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11 CENTER FOR ENVIRONMENTAL HEALTH

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ALAMEDA

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

17 Plaintiff,)

18 vs.)

19 CECICO, INC.; FOREIGN EXCHANGE, INC.;)
20 A.I.J.J. ENTERPRISES INC.; MAVERICK)
21 APPAREL LLC; NORDSTROM, INC.;)
22 RAINBOW APPAREL DISTRIBUTION)
23 CENTER CORP.; RAINBOW USA INC.;)
24 CORNERSTONE APPAREL, INC.; KIN)
25 COLLECTIVE LLC; MONA LIZA FASHION;)
26 A'GACI, L.L.C.; BURLINGTON COAT)
27 FACTORY WAREHOUSE CORPORATION;)
28 C. LUCE, INC.; ACTIVE USA, INC.;)
29 AMBIANCE U.S.A., INC.; and DOES 1 through)
30 200, inclusive,)

31 Defendants.)

ENDORSED
FILED
ALAMEDA COUNTY

MAR - 9 2015

CLERK OF THE SUPERIOR COURT
By Dep

Case No. RG 14-722774

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

12 2. Under California's Proposition 65, Health & 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 Lead.

18 3. Despite the fact that Defendants expose pregnant women and other
19 consumers to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
20 reproductive hazards associated with Lead exposure. Defendants' conduct thus violates the
21 warning provision of Proposition 65. Health & Safety Code § 25249.6.

22 **PARTIES**

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-
24 profit corporation dedicated to protecting the public from environmental health hazards and toxic
25 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
26 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and
27 brings this enforcement action in the public interest pursuant to Health & Safety Code §
28 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has

1 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
2 resulted in significant public benefit, including the reformulation of thousands of products to
3 remove toxic chemicals and to make them safer. CEH also provides information to Californians
4 about the health risks associated with exposure to hazardous substances, where manufacturers and
5 other responsible parties fail to do so.

6 5. Defendant CECICO, INC. is a person in the course of doing business
7 within the meaning of Health & Safety Code § 25249.11. CECICO, INC. manufactures,
8 distributes, and/or sells the Products for sale and use in California.

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

13 7. Defendant A.I.J.J. ENTERPRISES INC. is a person in the course of doing
14 business within the meaning of Health & Safety Code § 25249.11. A.I.J.J. ENTERPRISES INC.
15 manufactures, distributes, and/or sells the Products for sale and use in California.

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

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

22 10. Defendant RAINBOW APPAREL DISTRIBUTION CENTER CORP. is a
23 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.
24 RAINBOW APPAREL DISTRIBUTION CENTER CORP. manufactures, distributes, and/or
25 sells the Products for sale and use in California.

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

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

5 13. Defendant KIN COLLECTIVE LLC is a person in the course of doing
6 business within the meaning of Health & Safety Code § 25249.11. KIN COLLECTIVE LLC
7 manufactures, distributes, and/or sells the Products for sale and use in California.

8 14. Defendant MONA LIZA FASHION is a person in the course of doing
9 business within the meaning of Health & Safety Code § 25249.11. MONA LIZA FASHION
10 manufactures, distributes, and/or sells the Products for sale and use in California.

11 15. Defendant A’GACI, L.L.C. is a person in the course of doing business
12 within the meaning of Health & Safety Code § 25249.11. A’GACI, L.L.C. manufactures,
13 distributes, and/or sells the Products for sale and use in California.

14 16. Defendant BURLINGTON COAT FACTORY WAREHOUSE
15 CORPORATION is a person in the course of doing business within the meaning of Health &
16 Safety Code § 25249.11. BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
17 manufactures, distributes, and/or sells the Products for sale and use in California.

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

21 18. Defendant ACTIVE USA, INC. is a person in the course of doing business
22 within the meaning of Health & Safety Code § 25249.11. ACTIVE USA, INC. manufactures,
23 distributes, and/or sells the Products for sale and use in California.

24 19. Defendant AMBIANCE U.S.A., INC. is a person in the course of doing
25 business within the meaning of Health & Safety Code § 25249.11. AMBIANCE U.S.A., INC.
26 manufactures, distributes, and/or sells the Products for sale and use in California.

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1 business responsible for the exposure can prove that it fits within a statutory exemption. Health
2 & Safety Code § 25249.6 states, in pertinent part:

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

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

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

21 30. Young children are especially susceptible to the toxic effects of Lead.
22 Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts from
23 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
24 absorb and retain more Lead in proportion to their weight than do adults. Young children also
25 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
26 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
27 small doses received in childhood, over time, can cause adverse health impacts, including but not
28 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such

1 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
2 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

3 31. There is no safe level of exposure to Lead and even minute amounts of
4 Lead exposure have been proven harmful to children and adults. Studies have repeatedly
5 concluded that concentrations of Lead in children's blood previously deemed acceptable can have
6 adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children with
7 Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*
8 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the
9 smallest detectable amount of blood Lead levels in children can mean the difference between an
10 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead
11 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

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

18 33. Defendants' Products contain sufficient quantities of Lead such that
19 consumers, including pregnant women, who wear, touch or handle the Products are exposed to
20 Lead through the average use of the Products. The routes of exposure for the violations are
21 ingestion via hand-to-mouth contact after consumers wear, touch or handle the Products, and
22 dermal absorption directly through the skin when consumers wear, touch or handle the Products.
23 These exposures occur in homes, workplaces, and everywhere else throughout California where
24 these Products are handled or used.

25 34. No clear and reasonable warning is provided with the Products regarding
26 the carcinogenic or reproductive hazards of Lead.

27 35. Any person acting in the public interest has standing to enforce violations
28 of Proposition 65 provided that such person has supplied the requisite public enforcers with a

1 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
2 action within such time. Health & Safety Code § 25249.7(d).

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

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

26 38. None of the public prosecutors with the authority to prosecute violations of
27 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
28

1 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
2 of CEH's Notices.

3 39. Defendants both know and intend that individuals, including pregnant
4 women, will wear, touch, or handle the Products, thus exposing them to Lead.

5 40. Under Proposition 65, an exposure is "knowing" where the party
6 responsible for such exposure has:

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

10 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
11 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
12 § 12201).

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

15 42. Defendants also have constructive knowledge that their Products contain
16 Lead due to the widespread media coverage concerning the problem of Lead in consumer
17 products in general and in products made of leather, vinyl, or imitation leather materials in
18 particular.

19 43. As companies that manufacture, import, distribute, and/or sell the Products
20 for use in the California marketplace, Defendants know or should know that the Products contain
21 Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to
22 consumers who use the Products are a natural and foreseeable consequence of Defendants'
23 placing the Products into the stream of commerce.

24 44. Nevertheless, Defendants continue to expose consumers, including
25 pregnant women, to Lead without prior clear and reasonable warnings regarding the carcinogenic
26 or reproductive hazards of Lead.

27 45. CEH has engaged in good-faith efforts to resolve the claims alleged herein
28 prior to filing this Complaint.

PRAYER FOR RELIEF

Wherefore, CEH prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation of Proposition 65 according to proof;
2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendants from offering the Products for sale in California without providing prior clear and reasonable warnings, as CEH shall specify in further application to the Court;
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by Defendants, as CEH shall specify in further application to the Court;
4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: March 9, 2015

Respectfully submitted,

LEXINGTON LAW GROUP



Joseph Mann
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH