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ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By Walter S. [Signature] Deputy

6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

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

10
11 CENTER FOR ENVIRONMENTAL
12 HEALTH, a non-profit corporation,

Case No. RG15765590

13 Plaintiff,

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

14 v.

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

15 CHARMING CHARLIE LLC; 6PM.COM LLC;
16 ASHLEY STEWART, INC.; THE CATO
CORPORATION; COLONY BRANDS, INC.;
17 DAISO CALIFORNIA LLC; DIAMOND
SUPPLY COMPANY; DIAMOND SUPPLY
18 MANAGEMENT, INC.; DND FASHION,
INC.; DRAPER'S & DAMON'S LLC;
19 DREAMWAY TRADING LLC; EASTSTAR
SOLUTIONS, LTD.; E.S. ORIGINALS INC.;
20 E.S.I. CASES & ACCESSORIES, INC.;
ESQUIRE FOOTWEAR LLC; FAMILY
21 DOLLAR, INC.; GINA CONCEPTS LLC;
GINA GROUP LLC; REALPLAY CORP.;
22 RIPLAY, INC.; ROYAL FOOTWEAR AND
ACCESSORIES LLC; SEVENTH AVENUE,
23 INC.; SPRING FOOTWEAR CORP.; and
DOES 1 through 700, inclusive,

(Other)

24 Defendants.

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

1 PARTIES

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 CHARMING CHARLIE LLC is a person in the course of doing
14 business within the meaning of Health & Safety Code §25249.11. Charming Charlie LLC
15 manufactures, distributes and/or sells Handbags for sale or use in California.

16 6. Defendant 6PM.COM LLC is a person in the course of doing business
17 within the meaning of Health & Safety Code §25249.11. 6pm.com LLC manufactures,
18 distributes and/or sells Footwear for sale or use in California.

19 7. Defendant ASHLEY STEWART, INC. is a person in the course of doing
20 business within the meaning of Health & Safety Code §25249.11. Ashley Stewart, Inc.
21 manufactures, distributes and/or sells Belts for sale or use in California.

22 8. Defendant THE CATO CORPORATION is a person in the course of
23 doing business within the meaning of Health & Safety Code §25249.11. The Cato Corporation
24 manufactures, distributes and/or sells Handbags and Footwear for sale or use in California.

25 9. Defendant COLONY BRANDS, INC. is a person in the course of doing
26 business within the meaning of Health & Safety Code §25249.11. Colony Brands, Inc.
27 manufactures, distributes and/or sells Footwear for sale or use in California.

28 10. Defendant DAISO CALIFORNIA LLC is a person in the course of doing

1 business within the meaning of Health & Safety Code §25249.11. Daiso California LLC
2 manufactures, distributes and/or sells Handbags and Belts for sale or use in California.

3 11. Defendant DIAMOND SUPPLY COMPANY is a person in the course of
4 doing business within the meaning of Health & Safety Code §25249.11. Diamond Supply
5 Company manufactures, distributes and/or sells Handbags for sale or use in California.

6 12. Defendant DIAMOND SUPPLY MANAGEMENT, INC. is a person in
7 the course of doing business within the meaning of Health & Safety Code §25249.11. Diamond
8 Supply Management, Inc. manufactures, distributes and/or sells Handbags for sale or use in
9 California.

10 13. Defendant DND FASHION, INC. is a person in the course of doing
11 business within the meaning of Health & Safety Code §25249.11. DND Fashion, Inc.
12 manufactures, distributes and/or sells Footwear for sale or use in California.

13 14. Defendant DRAPER'S & DAMON'S LLC is a person in the course of
14 doing business within the meaning of Health & Safety Code §25249.11. Draper's and Damon's
15 LLC manufactures, distributes and/or sells Handbags for sale or use in California.

16 15. Defendant DREAMWAY TRADING LLC is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. Dreamway Trading
18 LLC manufactures, distributes and/or sells Handbags for sale or use in California.

19 16. Defendant EASTSTAR SOLUTIONS, LTD. is a person in the
20 course of doing business within the meaning of Health & Safety Code §25249.11. EastStar
21 Solutions, Ltd. manufactures, distributes and/or sells Footwear for sale or use in California.

22 17. Defendant E.S. ORIGINALS INC. is a person in the course of doing
23 business within the meaning of Health & Safety Code §25249.11. E.S. Originals Inc.
24 manufactures, distributes and/or sells Footwear for sale or use in California.

25 18. Defendant E.S.I. CASES & ACCESSORIES, INC. is a person in the
26 course of doing business within the meaning of Health & Safety Code §25249.11. E.S.I. Cases
27 & Accessories, Inc. manufactures, distributes and/or sells Handbags for sale or use in California.

28 19. Defendant ESQUIRE FOOTWEAR LLC is a person in the course of doing

1 business within the meaning of Health & Safety Code §25249.11. Esquire Footwear LLC
2 manufactures, distributes and/or sells Footwear for sale or use in California.

3 20. Defendant FAMILY DOLLAR, INC. is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. Family Dollar, Inc.
5 manufactures, distributes and/or sells Handbags for sale or use in California.

6 21. Defendant GINA CONCEPTS LLC is a person in the course of doing
7 business within the meaning of Health & Safety Code §25249.11. Gina Concepts LLC
8 manufactures, distributes and/or sells Handbags and Footwear for sale or use in California.

9 22. Defendant GINA GROUP LLC is a person in the course of doing business
10 within the meaning of Health & Safety Code §25249.11. Gina Group LLC manufactures,
11 distributes and/or sells Handbags and Footwear for sale or use in California.

12 23. Defendant REALPLAY CORP. is a person in the course of doing business
13 within the meaning of Health & Safety Code §25249.11. Realplay Corp. manufactures,
14 distributes and/or sells Footwear for sale or use in California.

15 24. Defendant RIPLAY, INC. is a person in the course of doing business
16 within the meaning of Health & Safety Code §25249.11. Riplay, Inc. manufactures, distributes
17 and/or sells Footwear for sale or use in California.

18 25. Defendant ROYAL FOOTWEAR AND ACCESSORIES LLC is a person
19 in the course of doing business within the meaning of Health & Safety Code §25249.11. Royal
20 Footwear and Accessories LLC manufactures, distributes and/or sells Footwear for sale or use in
21 California.

22 26. Defendant SEVENTH AVENUE, INC. is a person in the course of doing
23 business within the meaning of Health & Safety Code §25249.11. Seventh Avenue, Inc.
24 manufactures, distributes and/or sells Footwear for sale or use in California.

25 27. Defendant SPRING FOOTWEAR CORP. is a person in the course of
26 doing business within the meaning of Health & Safety Code §25249.11. Spring Footwear Corp.
27 manufactures, distributes and/or sells Footwear for sale or use in California.

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

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 43. 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 44. 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 45. 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 46. 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 47. The problem of Lead in Fashion Accessories is an industry-wide problem.
10 As the California Office of Environmental Health Hazard Assessment (“OEHHA”) recently
11 found, “[p]otentially unsafe levels of lead in products such as jewelry and fashion accessories
12 imported into the U.S. still pose a significant concern.” OEHHA, Initial Statement of Reasons
13 for Proposed Adoption of New Title 27, Article 6, at 20 (Jan. 16, 2015). Lead is found in the
14 fabric and/or material from which many Fashion Accessories are made. Lead is found in Fashion
15 Accessories as a stabilizer in the vinyl or imitation leather materials, as a chemical ingredient in
16 some of the dyes, paints and other coloring agents used in Fashion Accessories and in the
17 chemicals used in the leather tanning process. Lead is also found in the metallic components
18 such as zippers, zipper pulls and buckles used on some Fashion Accessories.

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

25 49. Some Fashion Accessories are designed for and marketed to children.
26 Young children are also exposed to Lead from Fashion Accessories when they touch or play with
27 Fashion Accessories that are owned or used by their parents or caretakers. In addition, young
28 children are exposed to Lead from Handbags when they eat food that is stored or carried in

1 Handbags or touch or play with non-food items that are stored or carried in Handbags.
2 Additional childhood exposures to Lead occur when children touch their hands to their mouths
3 after their hands have touched Fashion Accessories or items stored or carried in Handbags.

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

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

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

1 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's
2 counsel and the facts, studies or other data reviewed by such persons.

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

7 54. Defendants both know and intend that consumers in California, including
8 pregnant women and children, will wear, use, touch and/or handle Fashion Accessories, thus
9 exposing them to Lead.

10 55. Under Proposition 65, an exposure is "knowing" where the party
11 responsible for such exposure has:

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

15 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
16 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
17 §12201).

18 56. No clear and reasonable warning is provided with Fashion Accessories
19 regarding the carcinogenic or reproductive hazards of Lead.

20 57. Defendants have been informed of the Lead in their Fashion Accessories
21 by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by
22 CEH.

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

