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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,

13 Plaintiff,

14 v.

15 FREE PEOPLE OF PA LLC; ARCADIA
GROUP (USA) LIMITED; ASOS.COM
16 LIMITED; BELK, INC.; BELK ECOMMERCE
LLC; BLAKE-HALL, INC.; BLAKE HALL
17 FOOTWEAR INC.; DILLARD'S, INC.; GMA
ACCESSORIES INC.; MODMERICA GROUP,
18 INC.; MODMERICA GROUP LLC;
MODMERICA SERVICES, LLC; RFA
19 HOLDING GROUP LLC; TOP GUY INT'L
TRADING, LLC; URBANOG INC.; URBAN
20 OUTFITTERS, INC.; WNDIRECT USA, INC.;
and DOES 1 through 700, inclusive,

21 Defendants.
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ENDORSED
FILED
ALAMEDA COUNTY

OCT 09 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xii Bowie

RG 15789111

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 ARCADIA GROUP (USA) LIMITED is a person in the course
14 of doing business within the meaning of Health & Safety Code §25249.11. Arcadia Group
15 (USA) Limited manufactures, distributes and/or sells Handbags for sale or use in California.

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

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

22 8. Defendant BELK ECOMMERCE LLC is a person in the course of doing
23 business within the meaning of Health & Safety Code §25249.11. Belk eCommerce LLC
24 manufactures, distributes and/or sells Belts for sale or use in California.

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

28 10. Defendant BLAKE HALL FOOTWEAR INC. is a person in the course of

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

3 11. Defendant DILLARD’S, INC. is a person in the course of doing business
4 within the meaning of Health & Safety Code §25249.11. Dillard’s, Inc. manufactures, distributes
5 and/or sells Handbags for sale or use in California.

6 12. Defendant FREE PEOPLE OF PA LLC is a person in the course of doing
7 business within the meaning of Health & Safety Code §25249.11. Free People of PA LLC
8 manufactures, distributes and/or sells Handbags for sale or use in California.

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

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

15 15. Defendant MODMERICA GROUP LLC is a person in the course of doing
16 business within the meaning of Health & Safety Code §25249.11. ModMerica Group LLC
17 manufactures, distributes and/or sells Handbags for sale or use in California.

18 16. Defendant MODMERICA SERVICES, LLC is a person in the course of
19 doing business within the meaning of Health & Safety Code §25249.11. ModMerica Services,
20 LLC manufactures, distributes and/or sells Handbags for sale or use in California.

21 17. Defendant RFA HOLDING GROUP LLC is a person in the course of
22 doing business within the meaning of Health & Safety Code §25249.11. RFA Holding Group
23 LLC manufactures, distributes and/or sells Footwear for sale or use in California.

24 18. Defendant TOP GUY INT’L TRADING, LLC is a person in the course of
25 doing business within the meaning of Health & Safety Code §25249.11. Top Guy Int’l Trading,
26 LLC manufactures, distributes and/or sells Footwear for sale or use in California.

27 19. Defendant URBANOG INC. is a person in the course of doing business
28 within the meaning of Health & Safety Code §25249.11. UrbanOG Inc. manufactures,

1 distributes and/or sells Footwear and Belts for sale or use in California.

2 20. Defendant URBAN OUTFITTERS, INC. is a person in the course of
3 doing business within the meaning of Health & Safety Code §25249.11. Urban Outfitters, Inc.
4 manufactures, distributes and/or sells Handbags for sale or use in California.

5 21. Defendant WNDIRECT USA, INC. is a person in the course of doing
6 business within the meaning of Health & Safety Code §25249.11. wnDirect USA, Inc.
7 manufactures, distributes and/or sells Handbags for sale or use in California.

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

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

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

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

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

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

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

1 state to cause cancer or reproductive toxicity without first giving
2 clear and reasonable warning to such individual. . .

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

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

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

27 39. There is no safe level of exposure to Lead and even minute amounts of
28 Lead exposure have been shown to permanently reduce mental capacity. Studies have repeatedly

1 concluded that concentrations of Lead in children’s blood previously deemed acceptable can
2 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, “Intellectual Impairment in Children
3 with Blood Lead Concentrations below 10 ug per Deciliter,” *New England Journal of Medicine*
4 348:16, 2003. Another study found that childhood Lead exposure predicts intellectual
5 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead
6 concentrations from childhood. Mazumdar, M., *et al.*, “Low-Level Environmental Lead
7 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study,” *Environmental*
8 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, “Subclinical Lead Toxicity in U.S. Children
9 and Adolescents,” *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the
10 smallest detectable amount of blood Lead levels in children can mean the difference between an
11 A or B grade in school).

12 40. 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.
14 Hu, 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, L., *et al.*, “Reduced
16 Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental Health*
17 *Perspectives* 114:5, 2006.

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

28 42. Defendants’ Fashion Accessories contain sufficient quantities of Lead

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

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

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

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

27 46. CEH also sent a Certificate of Merit for each Notice to the California
28 Attorney General, the District Attorneys of every county in California, the City Attorneys of

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

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

16 48. Defendants both know and intend that consumers in California, including
17 pregnant women and children, will wear, use, touch and/or handle Fashion Accessories, thus
18 exposing them to Lead.

19 49. 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 50. No clear and reasonable warning is provided with Fashion Accessories
28 regarding the carcinogenic or reproductive hazards of Lead.

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

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

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

16 54. Nevertheless, Defendants continue to expose consumers in California,
17 including pregnant women and children, to Lead without prior clear and reasonable warnings
18 regarding the carcinogenic and/or reproductive hazards of Lead.

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

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

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1 300 and 401 through 700 (collectively, the “Belts Defendants”) are each a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11.

3 72. Belts Defendants know that average use of their Belts will expose users of
4 their Belts to Lead. Belts Defendants intend that their Belts be used in a manner that results in
5 users of their Belts being exposed to Lead contained therein.

6 73. Belts Defendants have failed, and continue to fail, to provide prior clear
7 and reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users
8 of their Belts.

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

13 Wherefore, CEH prays for judgment against Belts Defendants, as set forth
14 hereafter.

15 **PRAYER FOR RELIEF**

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

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

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

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

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

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

Dated: October 9, 2015

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH