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M. SALCIDO, DEPUTY

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

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

15 Plaintiff,)

16 vs.)

17 VERY J INC.; BELK, INC.; BELK)
18 ECOMMERCE LLC; D&H SOLUTIONS LLC;)
19 GREAT VISION INTERNATIONAL, INC.;)
20 ITEM HOUSE, INC.; LOUISE PARIS, LTD.;)
21 MCCAULOU'S, INC.; MODMERICA GROUP)
22 LLC; MODMERICA SERVICES, LLC;)
23 MODMERICA GROUP, INC.;)
24 OVERSTOCK.COM, INC.; SALT & PEPPER)
25 CLOTHING, INC.; TILLY'S, INC.; WINGS)
26 MANUFACTURING CORPORATION;)
27 WNDIRECT USA, INC.; WORLD OF JEANS)
28 & TOPS; Y.M.I. JEANSWEAR, INC.; and)
DOES 1 through 200, inclusive,)

Defendants.)

Case No. **RG15782612**

**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 use of Defendants' clothing made with leather, vinyl, or
10 imitation leather materials (the "Products"). Consumers, including pregnant women, are exposed
11 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 VERY J INC. is a person in the course of doing business within
7 the meaning of Health & Safety Code § 25249.11. VERY J INC. manufactures, distributes,
8 and/or sells the Products for sale and use in California.

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

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

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

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

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

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

28

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

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

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

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

14 16. Defendant OVERSTOCK.COM, INC. is a person in the course of doing
15 business within the meaning of Health & Safety Code § 25249.11. OVERSTOCK.COM, INC.
16 manufactures, distributes, and/or sells the Products for sale and use in California.

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

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

24 19. Defendant WINGS MANUFACTURING CORPORATION is a person in
25 the course of doing business within the meaning of Health & Safety Code § 25249.11. WINGS
26 MANUFACTURING CORPORATION manufactures, distributes, and/or sells the Products for
27 sale and use in California.

28

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

10 34. Young children are especially susceptible to the toxic effects of Lead.
11 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
12 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
13 absorb and retain more Lead in proportion to their weight than do adults. Young children also
14 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
15 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
16 small doses received in childhood, over time, can cause adverse health impacts, including but not
17 limited to reproductive toxicity, later in life.

18 35. 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. Hu,
20 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, Lourdes, *et al.*,
22 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*
23 *Health Perspectives* 114:5, 2006. For example, in times of physiological stress, such as
24 pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
25 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

26 36. Defendants' Products contain sufficient quantities of Lead such that
27 consumers, including pregnant women, who wear, touch, or handle the Products are exposed to
28 Lead through the average use of the Products. The routes of exposure for the violations are

1 ingestion via hand-to-mouth contact after consumers wear, touch, or handle the Products, and
2 dermal absorption directly through the skin when consumers wear, touch, or handle the Products.
3 These exposures occur in homes, workplaces, and everywhere else throughout California where
4 these Products are handled or used.

5 37. No clear and reasonable warning is provided with the Products regarding
6 the carcinogenic or reproductive hazards of Lead.

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

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

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

1 action based on the facts alleged in each Notice. In compliance with Health & Safety Code §
2 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General included
3 factual information – provided on a confidential basis – sufficient to establish the basis for the
4 Certificate, including the identity of the person(s) consulted by CEH’s counsel and the facts,
5 studies, or other data reviewed by such persons.

6 41. None of the public prosecutors with the authority to prosecute violations of
7 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
8 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
9 of CEH’s Notices.

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

12 43. Under Proposition 65, an exposure is “knowing” where the party
13 responsible for such exposure has:

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

16 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
17 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
18 § 12201).

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

21 45. Defendants also have constructive knowledge that their Products contain
22 Lead due to the widespread media coverage concerning the problem of Lead in consumer
23 products in general and in products made of leather, vinyl, or imitation leather materials in
24 particular.

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

1 consumers who use the Products are a natural and foreseeable consequence of Defendants'
2 placing the Products into the stream of commerce.

3 47. Nevertheless, Defendants continue to expose consumers, including
4 pregnant women, to Lead without prior clear and reasonable warnings regarding the carcinogenic
5 or reproductive hazards of Lead.

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

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

13 **FIRST CAUSE OF ACTION**

14 **(Violations of Health & Safety Code § 25249.6)**

15 50. CEH realleges and incorporates by reference as if specifically set forth
16 herein Paragraphs 1 through 49, inclusive.

17 51. By placing the Products into the stream of commerce, each Defendant is a
18 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

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

21 53. Defendants know that average use of the Products will expose users of the
22 Products to Lead. Defendants intend that the Products be used in a manner that results in
23 exposures to Lead from the Products.

24 54. Defendants have failed, and continue to fail, to provide clear and
25 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
26 the Products.

27 55. By committing the acts alleged above, Defendants have at all times
28 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing

1 individuals to Lead without first giving clear and reasonable warnings to such individuals
2 regarding the carcinogenicity and reproductive toxicity of Lead.

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

4 **PRAYER FOR RELIEF**

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

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

9 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
10 preliminarily and permanently enjoin Defendants from offering the Products for sale in
11 California without providing prior clear and reasonable warnings, as CEH shall specify in further
12 application to the Court;

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


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

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

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20 Dated: August 19, 2015

Respectfully submitted,

LEXINGTON LAW GROUP

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24 _____
25 Joseph Mann
26 Attorneys for Plaintiff
27 CENTER FOR ENVIRONMENTAL HEALTH
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