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12

ENDORSED
FILED
ALAMEDA COUNTY

NOV 04 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson Deputy

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF ALAMEDA
15

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

18 Plaintiff,)

19 vs.)

20 SKAI BLU, INC. (dba REHAB CLOTHING);)
21 T.J. MAXX OF CA, LLC; THE TJX)
22 COMPANIES, INC.; TOWNSEN, INC.; B.B.)
23 DAKOTA, INC.; and DOES 1 through 200,)
24 inclusive,)

25 Defendants.)
26)
27)
28)

Case No. RG15792125

**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 SKAI BLU, INC. (dba REHAB CLOTHING) is a person in the
7 course of doing business within the meaning of Health & Safety Code § 25249.11. SKAI BLU,
8 INC. (dba REHAB CLOTHING) manufactures, distributes, and/or sells the Products for sale and
9 use in California.

10 6. Defendant T.J. MAXX OF CA, LLC is a person in the course of doing
11 business within the meaning of Health & Safety Code § 25249.11. T.J. MAXX OF CA, LLC
12 manufactures, distributes, and/or sells the Products for sale and use in California.

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

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

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

23 10. DOES 1 through 200 are each a person in the course of doing business
24 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,
25 distribute, and/or sell the Products for sale or use in California.

26 11. The true names of DOES 1 through 200 are unknown to CEH at this time.
27 When their identities are ascertained, the Complaint shall be amended to reflect their true names.
28

12. The defendants identified in paragraphs 5 through 9 and DOES 1 through 200 are collectively referred to herein as "Defendants."

JURISDICTION AND VENUE

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

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

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

BACKGROUND FACTS

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

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

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

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

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

15 20. There is no safe level of exposure to Lead and even minute amounts of
16 Lead exposure have been proven harmful to children and adults. Studies have repeatedly
17 concluded that concentrations of Lead in children's blood previously deemed acceptable can have
18 adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children with
19 Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*
20 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the
21 smallest detectable amount of blood Lead levels in children can mean the difference between an
22 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead
23 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

24 21. Young children are especially susceptible to the toxic effects of Lead.
25 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
26 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
27 absorb and retain more Lead in proportion to their weight than do adults. Young children also
28 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal

1 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
2 small doses received in childhood, over time, can cause adverse health impacts, including but not
3 limited to reproductive toxicity, later in life.

4 22. Lead exposures for pregnant women are also of particular concern in light
5 of evidence that even short term lead exposures in utero may have long-term harmful effects. Hu,
6 H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
7 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*,
8 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*
9 *Health Perspectives* 114:5, 2006. For example, in times of physiological stress, such as
10 pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
11 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

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

19 24. No clear and reasonable warning is provided with the Products regarding
20 the carcinogenic or reproductive hazards of Lead.

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

25 26. More than sixty days prior to naming each Defendant in this lawsuit, CEH
26 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
27 the District Attorneys of every county in California, the City Attorneys of every California city
28 with a population greater than 750,000, and to each of the named Defendants. In compliance with

1 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
2 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
3 time period during which violations occurred; (4) specific descriptions of the violations, including
4 (a) the routes of exposure to Lead from the Products, and (b) the specific type of Products sold
5 and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
6 chemical that is the subject of the violations described in each Notice.

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

20 28. None of the public prosecutors with the authority to prosecute violations of
21 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
22 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each
23 of CEH's Notices.

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

26 30. Under Proposition 65, an exposure is "knowing" where the party
27 responsible for such exposure has:
28

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

3 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
4 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
5 § 12201).

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

8 32. Defendants also have constructive knowledge that their Products contain
9 Lead due to the widespread media coverage concerning the problem of Lead in consumer
10 products in general and in products made of leather, vinyl, or imitation leather materials in
11 particular.

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

17 34. Nevertheless, Defendants continue to expose consumers, including
18 pregnant women, to Lead without prior clear and reasonable warnings regarding the carcinogenic
19 or reproductive hazards of Lead.

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

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

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1 **FIRST CAUSE OF ACTION**

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

3 37. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 36, inclusive.

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

7 39. Lead is a chemical listed by the State of California as known to cause
8 cancer, birth defects, and other reproductive harm.

9 40. Defendants know that average use of the Products will expose users of the
10 Products to Lead. Defendants intend that the Products be used in a manner that results in
11 exposures to Lead from the Products.

12 41. Defendants have failed, and continue to fail, to provide clear and
13 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
14 the Products.

15 42. By committing the acts alleged above, Defendants have at all times
16 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
17 individuals to Lead without first giving clear and reasonable warnings to such individuals
18 regarding the carcinogenicity and reproductive toxicity of Lead.

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

20 **PRAYER FOR RELIEF**

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

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

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

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

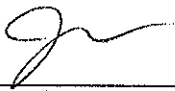
4 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
5 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

6 5. That the Court grant such other and further relief as may be just and proper.
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8 Dated: November 4, 2015

Respectfully submitted,

9 LEXINGTON LAW GROUP
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12 _____
13 Joseph Mann
14 Attorneys for Plaintiff
15 CENTER FOR ENVIRONMENTAL HEALTH
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