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CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED
FILED
ALAMEDA COUNTY**
FEB - 3 2016
CLERK OF THE SUPERIOR COURT
By M. Salcido

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

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
vs.)
)
SPIRIT HALLOWEEN SUPERSTORES LLC;)
and DOES 1 through 200, inclusive,)
)
Defendants.)
)
)
)
)

Case No. RG16802869
**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' Spirit Western Belt & Holster, SKU No.
10 07206634 (the "Products"). Consumers, including pregnant women, are exposed to Lead when
11 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, some 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 16. Harms from consumer exposure to Lead are well-documented. The U.S.
2 Environmental Protection Agency has determined that there is no safe level of exposure to Lead,
3 based on the best science available. See [https://safewater.zendesk.com/hc/en-us/articles/
4 211401938-4-What-are-EPA-s-drinking-water-regulations-for-lead-](https://safewater.zendesk.com/hc/en-us/articles/211401938-4-What-are-EPA-s-drinking-water-regulations-for-lead-). Lead in blood, even at very
5 low levels, has been found to be correlated with all causes of mortality, including cancer and
6 cardiovascular disease. See Menke, A., *et al.*, “Blood Lead Below 0.48 $\mu\text{mol/L}$ (10 $\mu\text{g/dL}$) and
7 Mortality Among US Adults,” *Circulation* (September 2009) Vol. 114:13; Schober, S., *et al.*,
8 “Blood Lead Levels and Death from All Causes, Cardiovascular Disease, and Cancer,”
9 *Environmental Health Perspectives* (October 2006) Vol. 114:10; Cheung, M., “Blood Lead
10 Concentration Correlates with All Cause, All Cancer and Lung Cancer Mortality in Adults,”
11 *Asian Pacific Journal of Cancer Prevention* (2013) Vol. 14.

12 17. 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. For example, in times of physiological stress, such as
18 pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
19 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

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

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

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

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

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

28

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

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

7 25. Under Proposition 65, an exposure is "knowing" where the party
8 responsible for such exposure has:

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

11 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
12 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
13 § 12201).

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

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

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

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

28

1 **PRAYER FOR RELIEF**

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

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

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

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

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

15 5. That the Court grant such other and further relief as may be just and proper.
16

17 Dated: February 3, 2016

Respectfully submitted,

18 LEXINGTON LAW GROUP
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21 _____
22 Joseph Mann
23 Attorneys for Plaintiff
24 CENTER FOR ENVIRONMENTAL HEALTH
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