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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

MAR 24 2017

CLERK OF THE SUPERIOR COURT
By H. Ghel Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

12 CENTER FOR ENVIRONMENTAL
13 HEALTH, a non-profit corporation,

14 Plaintiff,

15 v.

16 DB SHOE COMPANY, LLC; FANATICS,
INC.; FANATICS RETAIL GROUP NORTH,
17 INC.; GAMEWEAR, INC.; HEELS.COM, LLC;
NICOLE, INC.; RELIABLE KNITTING
18 WORKS; and DOES 1 through 300, inclusive,

19 Defendants.

Case No. RG 17 85 43 36

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 two types of fashion accessories: (i) wallets made
10 with leather, vinyl or imitation leather materials (“Wallets”); and (ii) footwear made with leather,
11 vinyl or imitation leather materials (“Footwear”). Wallets and Footwear are collectively referred
12 to herein as “Fashion Accessories.” Individuals in California, including pregnant women and
13 children, are exposed to Lead when they wear, use, touch or handle Defendants’ Fashion
14 Accessories.

15 2. Under California’s Proposition 65, Health & Safety Code §25249.5, *et*
16 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
17 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
18 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
19 introduce Fashion Accessories contaminated with significant quantities of Lead into the
20 California marketplace, exposing users of their Fashion Accessories, many of whom are pregnant
21 women and children, to Lead.

22 3. Despite the fact that Defendants expose pregnant women, children and
23 other people who come into contact with the Fashion Accessories to Lead, Defendants provide
24 no warnings whatsoever about the carcinogenic or reproductive hazards associated with these
25 Lead exposures. Defendants’ conduct thus violates the warning provision of Proposition 65.
26 Health & Safety Code §25249.6.

27 **PARTIES**

28 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a

1 non-profit corporation dedicated to protecting the public from environmental health hazards and
2 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
3 State of California. CEH is a “person” within the meaning of Health & Safety Code
4 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
5 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
6 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
7 cases have resulted in significant public benefit, including the reformulation of thousands of
8 products to remove toxic chemicals to make them safer. CEH also provides information to
9 Californians about the health risks associated with exposure to hazardous substances, where
10 manufacturers and other responsible parties fail to do so.

11 5. Defendant DB SHOE COMPANY, LLC is a person in the course of doing
12 business within the meaning of Health & Safety Code §25249.11. DB Shoe Company, LLC
13 manufactures, distributes and/or sells Footwear for sale or use in California.

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

17 7. Defendant FANATICS RETAIL GROUP NORTH, INC. is a person in the
18 course of doing business within the meaning of Health & Safety Code §25249.11. Fanatics
19 Retail Group North, Inc. manufactures, distributes and/or sells Wallets for sale or use in
20 California.

21 8. Defendant GAMEWEAR, INC. is a person in the course of doing business
22 within the meaning of Health & Safety Code §25249.11. GameWear, Inc. manufactures,
23 distributes and/or sells Wallets for sale or use in California.

24 9. Defendant HEELS.COM, LLC is a person in the course of doing business
25 within the meaning of Health & Safety Code §25249.11. Heels.com, LLC manufactures,
26 distributes and/or sells Footwear for sale or use in California.

27 10. Defendant NICOLE, INC. is a person in the course of doing business
28 within the meaning of Health & Safety Code §25249.11. Nicole, Inc. manufactures, distributes

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

2 11. Defendant RELIABLE KNITTING WORKS is a person in the course of
3 doing business within the meaning of Health & Safety Code §25249.11. Reliable Knitting
4 Works manufactures, distributes and/or sells Footwear for sale or use in California.

5 12. DOES 1 through 100 are each a person in the course of doing business
6 within the meaning of Health & Safety Code §25249.11. DOES 1 through 100 manufacture,
7 distribute and/or sell Wallets for sale or use in California.

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

11 14. DOES 201 through 300 are each a person in the course of doing business
12 within the meaning of Health & Safety Code §25249.11. DOES 201 through 300 manufacture,
13 distribute and/or sell Wallets and Footwear for sale or use in California.

14 15. The true names of DOES 1 through 300 are unknown to CEH at this time.
15 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

16 16. The defendants identified in paragraphs 5 through 11 and DOES 1 through
17 300 are collectively referred to herein as “Defendants.”

18 **JURISDICTION AND VENUE**

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

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

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

11 25. There is no safe level of exposure to Lead and even minute amounts of
12 Lead exposure have been shown to permanently reduce mental capacity. Studies have repeatedly
13 concluded that concentrations of Lead in children’s blood previously deemed acceptable can
14 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, “Intellectual Impairment in Children
15 with Blood Lead Concentrations below 10 ug per Deciliter,” *New England Journal of Medicine*
16 348:16, 2003. Another study found that childhood Lead exposure predicts intellectual
17 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead
18 concentrations from childhood. Mazumdar, M., *et al.*, “Low-Level Environmental Lead
19 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study,” *Environmental*
20 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, “Subclinical Lead Toxicity in U.S. Children
21 and Adolescents,” *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the
22 smallest detectable amount of blood Lead levels in children can mean the difference between an
23 A or B grade in school).

24 26. Lead exposures for pregnant women are also of particular concern in light
25 of evidence that even short-term Lead exposures *in utero* may have long-term harmful effects.
26 Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
27 Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, “Reduced
28 Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental Health*

1 *Perspectives* 114:5, 2006.

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

12 28. Defendants’ Fashion Accessories contain sufficient quantities of Lead
13 such that individuals, including pregnant women and children, who wear, use, touch and/or
14 handle Fashion Accessories are exposed to Lead through the average use of Fashion Accessories.
15 Consumer exposures to Lead occur through ingestion via hand-to-mouth contact after consumers
16 touch and/or handle Fashion Accessories or items that have been stored in Wallets, and dermal
17 absorption directly through the skin when consumers wear, touch and/or handle Fashion
18 Accessories or items that have been stored in Wallets.

19 29. Some Fashion Accessories are designed for and marketed to children.
20 Young children are also exposed to Lead from Fashion Accessories when they touch or play with
21 Fashion Accessories that are owned or used by their parents or caretakers. In addition, young
22 children are exposed to Lead from Wallets when they touch or play with items that are stored or
23 carried in Wallets. Additional childhood exposures to Lead occur when children touch their
24 hands to their mouths after their hands have touched the Fashion Accessories or items stored in
25 Wallets.

26 30. Any person acting in the public interest has standing to enforce violations
27 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
28 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the

1 action within such time. Health & Safety Code §25249.7(d).

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

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

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

1 34. Defendants both know and intend that consumers in California, including
2 pregnant women and children, will wear, use, touch and/or handle Fashion Accessories, thus
3 exposing them to Lead.

4 35. Under Proposition 65, an exposure is “knowing” where the party
5 responsible for such exposure has:

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

9 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
10 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
11 §12201).

12 36. No clear and reasonable warning is provided with Fashion Accessories
13 regarding the carcinogenic or reproductive hazards of Lead.

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

17 38. Defendants also have constructive knowledge that their Fashion
18 Accessories contain Lead due to the widespread media coverage concerning the problem of Lead
19 in consumer products in general and in Fashion Accessories in particular. The industry-wide
20 problem of Lead in Fashion Accessories has been the subject of extensive media coverage,
21 including articles in national newspapers and stories on nationally televised programs such as
22 “Good Morning America.”

23 39. As companies that manufacture, import, distribute and/or sell Fashion
24 Accessories for use in the California marketplace, Defendants know or should know that Fashion
25 Accessories contain Lead and that individuals who use Fashion Accessories will be exposed to
26 Lead. The Lead exposures to consumers who use the Fashion Accessories are a natural and
27 foreseeable consequence of Defendants’ placing the Fashion Accessories into the stream of
28 commerce.

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(a),
4 preliminarily and permanently enjoin Defendants from offering Fashion Accessories for sale in
5 California without providing prior clear and reasonable warnings, as CEH shall specify in further
6 application to the Court;

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

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

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
16 proper.

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18 Dated: March 24, 2017

Respectfully submitted,

19 LEXINGTON LAW GROUP

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21 _____
22 Howard Hirsch
23 Attorneys for Plaintiff
24 CENTER FOR ENVIRONMENTAL HEALTH
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