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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

CORNERSTONE APPAREL, INC.; DESS, INC.;
WINSTON & BLUE, INC.; and DOES 1 through
200, inclusive,

Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

DEC 28 2018

CLERK OF THE SUPERIOR COURT
By B. Moskara Deputy

Case No. 2018901028

**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 information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 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"). Lead is a chemical known to the State of California to cause cancer and birth defects
8 and other reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale, and/or use of belts made with leather, vinyl or imitation leather
10 materials (the "Products"). Individuals in California, including pregnant women and children, are
11 exposed to Lead when they wear, use, touch, or handle the Products.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
13 unlawful for businesses to knowingly and intentionally expose individuals in California to
14 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, thereby exposing users of their Products, many of whom are pregnant women and
18 children, to Lead.

19 3. Despite the fact that Defendants expose pregnant women, children and other
20 people who come into contact with the Products to Lead, Defendants provide no warnings
21 whatsoever about these Lead exposures. Defendants' conduct thus violates the warning provision
22 of Proposition 65. Health & Safety Code § 25249.6.

23 PARTIES

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
25 corporation dedicated to protecting the public from environmental health hazards and toxic
26 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
27 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and
28 brings this enforcement action in the public interest pursuant to Health & Safety Code §

1 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
2 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
3 resulted in significant public benefit, including the reformulation of thousands of products to
4 remove toxic chemicals and to make them safer. CEH also provides information to Californians
5 about the health risks associated with exposure to hazardous substances, where manufacturers and
6 other responsible parties fail to do so.

7 5. Defendant CORNERSTONE APPAREL, INC. is a person in the course of doing
8 business within the meaning of Health & Safety Code § 25249.11. Defendant CORNERSTONE
9 APPAREL, INC. manufactures, distributes, and/or sells Products for sale or use in California.

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

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

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

19 9. The true names of DOES 1 through 200 are either unknown to CEH at this time or
20 the applicable time period before which CEH may file a Proposition 65 action has not run. When
21 their identities are ascertained or the applicable time period before which CEH may file a
22 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

23 10. The defendants identified in paragraphs 5 through 7 and DOES 1 through 200 are
24 collectively referred to herein as "Defendants."

25 JURISDICTION AND VENUE

26 11. The Court has jurisdiction over this action pursuant to Health & Safety Code §
27 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
28 California Constitution Article VI, Section 10, because this case is a cause not given by statute to

1 other trial courts.

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

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

10 **BACKGROUND FACTS**

11 14. The People of the State of California have declared by initiative under Proposition
12 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
13 other reproductive harm.” Proposition 65, § 1(b).

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

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

22 16. On February 27, 1987, the State of California officially listed lead as a chemical
23 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant
24 under three subcategories: “developmental reproductive toxicity,” which means harm to the
25 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive
26 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27
27 Cal. Code Regs. (“C.C.R.”) § 27001(c). On February 27, 1988, one year after it was listed as a
28 chemical known to cause reproductive toxicity, lead became subject to the clear and reasonable

1 warning requirement regarding reproductive toxicants under Proposition 65. *Id.*; Health & Safety
2 Code § 25249.10(b).

3 17. On October 1, 1992, the State of California officially listed lead and lead
4 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
5 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
6 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §
7 27001(b); Health & Safety Code § 25249.10(b).

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

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

1 smallest detectable amount of blood Lead levels in children can mean the difference between an
2 A or B grade in school).

3 20. Lead exposures for pregnant women are also of particular concern in light of
4 evidence that even short-term Lead exposures *in utero* may have long-term harmful effects. Hu,
5 H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
6 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*, "Reduced
7 Intellectual Development in Children with Prenatal Lead Exposure," *Environmental Health*
8 *Perspectives* 114:5, 2006.

9 21. The problem of Lead in fashion accessories such as the Products is an industry-
10 wide problem. As the California Office of Environmental Health Hazard Assessment
11 ("OEHHA") has found, "[p]otentially unsafe levels of lead in products such as jewelry and
12 fashion accessories imported into the U.S. still pose a significant concern." OEHHA, Initial
13 Statement of Reasons for Proposed Adoption of New Title 27, Article 6, at 20 (Jan. 16, 2015).

14 22. The Products are made of materials and components that contain Lead. Lead is
15 found in the Products as a stabilizer in the vinyl or imitation leather materials, as a chemical
16 ingredient in some of the dyes, paints and other coloring agents used in the Products, and in the
17 chemicals used in the leather tanning process. Lead is also found in metallic components such as
18 buckles used on the Products.

19 23. Defendants' Products contain sufficient quantities of Lead such that individuals,
20 including pregnant women and children, who wear, use, touch and/or handle the Products are
21 exposed to Lead through the average use of such Products. The routes of exposure for the
22 violations are ingestion via hand-to-mouth contact after consumers touch and/or handle the
23 Products, and dermal absorption directly through the skin when consumers take on or off the
24 Products or wear, touch and/or handle Products.

25 24. Some of the Products are designed for and marketed to children. Young children
26 are also exposed to Lead from the Products when they touch or play with Products that are owned
27 or used by their parents or caretakers. Additional childhood exposures to Lead occur when
28 children touch their hands to their mouths after their hands have touched the Products.

1 25. No clear and reasonable warning is provided with the Products regarding the
2 exposures to Lead which occur through ordinary use of the Products.

3 26. Any person acting in the public interest has standing to enforce violations of
4 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
5 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
6 within such time. Health & Safety Code § 25249.7(d).

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

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

1 studies, or other data reviewed by such persons.

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

6 30. Defendants both know and intend that consumers in California, including pregnant
7 women and children, will wear, use, touch and/or handle the Products, thus exposing them to
8 Lead through the average use of the Products.

9 31. Nevertheless, Defendants continue to expose consumers, including pregnant
10 women and children, to Lead without prior clear and reasonable warnings regarding the
11 carcinogenic and reproductive hazards of Lead.

12 32. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
13 filing this Complaint.

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

19 **FIRST CAUSE OF ACTION**
20 **(Violations of Health & Safety Code § 25249.6)**

21 34. CEH realleges and incorporates by reference as if specifically set forth herein
22 Paragraphs 1 through 33, inclusive.

23 35. Lead is a chemical listed by the State of California as known to cause cancer, birth
24 defects and other reproductive harm.

25 36. By placing their Products into the stream of commerce, each Defendant is a person
26 in the course of doing business within the meaning of Health & Safety Code § 25249.11.

27 37. Defendants know that the average use of their Products will expose users of their
28 Products to Lead. Defendants intend that the Products be used in a manner that results in users of

1 their Products being exposed to the Lead contained therein.

2 38. Defendants have failed, and continue to fail, to provide clear and reasonable
3 warnings to users of their Products regarding the exposures to Lead which occur from use of the
4 Products.

5 39. By committing the acts alleged above, Defendants have at all times relevant to this
6 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Lead
7 without first giving clear and reasonable warnings to such individuals regarding those exposures.

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

9 **PRAYER FOR RELIEF**

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

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

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

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

21 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
22 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: December 27, 2018

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH