

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LEXINGTON LAW GROUP
Howard Hirsch, State Bar No. 213209
Joseph Mann, State Bar No. 207968
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
hhirsch@lexlawgroup.com
jmann@lexlawgroup.com

Attorneys for Plaintiff
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., *et al.*,

Defendants.

FILED BY FAX
ALAMEDA COUNTY

June 30, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:
RG18933923

Case No. RG 18-933923

**SECOND AMENDED 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"). 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 three types of fashion accessories: (i) belts made
10 with leather, vinyl, or imitation leather materials (collectively, "Belts"); (ii) wallets, handbags,
11 purses, and clutches made with leather, vinyl, or imitation leather materials (collectively,
12 "Handbags"); and (iii) footwear made with leather, vinyl, or imitation leather materials
13 (collectively, "Footwear"). Belts, Handbags, and Footwear are collectively referred to herein as
14 "Fashion Accessories." Individuals in California, including pregnant women and children, are
15 exposed to Lead when they wear, use, touch, or handle the Fashion Accessories.

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

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

27

28

1 **PARTIES**

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

13 5. Defendant NASTY GAL LIMITED is a person in the course of doing business
14 within the meaning of Health & Safety Code § 25249.11. Defendant NASTY GAL LIMITED
15 manufactures, distributes, and/or sells Belts for sale or use in California.

16 6. Defendant JET.COM, INC. is a person in the course of doing business within the
17 meaning of Health & Safety Code § 25249.11. Defendant JET.COM, INC. manufactures,
18 distributes, and/or sells Belts for sale or use in California.

19 7. Defendant WALMART, INC. is a person in the course of doing business within
20 the meaning of Health & Safety Code § 25249.11. Defendant WALMART, INC. manufactures,
21 distributes, and/or sells Belts for sale or use in California.

22 8. Defendant ORLY SHOE CORP. is a person in the course of doing business within
23 the meaning of Health & Safety Code § 25249.11. Defendant ORLY SHOE CORP.
24 manufactures, distributes, and/or sells Footwear for sale or use in California.

25 9. DOES 4 through 100 are each a person in the course of doing business within the
26 meaning of Health & Safety Code § 25249.11. DOES 4 through 100 manufacture, distribute,
27 and/or sell Belts for sale or use in California. Defendants NASTY GAL LIMITED; JET.COM,
28

1 INC.; WALMART, INC.; and DOES 4 through 100 are collectively referred to herein as “Belts
2 Defendants.”

3 10. DOES 101 through 200 are each a person in the course of doing business within
4 the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,
5 distribute, and/or sell Handbags for sale or use in California. DOES 101 through 200 are
6 collectively referred to herein as “Handbags Defendants.”

7 11. DOES 201 through 300 are each a person in the course of doing business within
8 the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,
9 distribute, and/or sell Footwear for sale or use in California. Defendants ORLY SHOE CORP.
10 and DOES 201 through 300 are collectively referred to herein as “Footwear Defendants.”

11 12. DOES 301 through 400 are each a person in the course of doing business within
12 the meaning of Health & Safety Code § 25249.11. DOES 301 through 400 manufacture,
13 distribute, and/or sell Belts and Handbags for sale or use in California. DOES 301 through 400
14 are each a “Belts Defendant” as well as a “Handbags Defendant.”

15 13. DOES 401 through 500 are each a person in the course of doing business within
16 the meaning of Health & Safety Code § 25249.11. DOES 401 through 500 manufacture,
17 distribute, and/or sell Belts and Footwear for sale or use in California. DOES 401 through 500
18 are each a “Belts Defendant” as well as a “Footwear Defendant.”

19 14. DOES 501 through 600 are each a person in the course of doing business within
20 the meaning of Health & Safety Code § 25249.11. DOES 501 through 600 manufacture,
21 distribute, and/or sell Handbags and Footwear for sale or use in California. DOES 501 through
22 600 are each a “Handbags Defendant” as well as a “Footwear Defendant.”

23 15. DOES 601 through 700 are each a person in the course of doing business within
24 the meaning of Health & Safety Code § 25249.11. DOES 601 through 700 manufacture,
25 distribute, and/or sell Belts, Handbags, and Footwear for sale or use in California. DOES 601
26 through 700 are each a “Belts Defendant,” a “Handbags Defendant,” and a “Footwear
27 Defendant.”

28 16. The true names of DOES 4 through 700 are either unknown to CEH at this time or

1 the applicable time period before which CEH may file a Proposition 65 action has not run. When
2 their identities are ascertained or the applicable time period before which CEH may file a
3 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

4 17. The defendants identified in paragraphs 5 through 8 and DOES 4 through 700 are
5 collectively referred to herein as “Defendants.”

6 **JURISDICTION AND VENUE**

7 18. The Court has jurisdiction over this action pursuant to Health & Safety Code §
8 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
9 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
10 other trial courts.

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

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

19 **BACKGROUND FACTS**

20 21. The People of the State of California have declared by initiative under Proposition
21 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
22 other reproductive harm.” Proposition 65, § 1(b).

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

28 No person in the course of doing business shall knowingly and

1 intentionally expose any individual to a chemical known to the state to
2 cause cancer or reproductive toxicity without first giving clear and
reasonable warning to such individual

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

12 24. On October 1, 1992, the State of California officially listed lead and lead
13 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
14 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
15 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §
16 27001(b); Health & Safety Code § 25249.10(b).

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

27
28

1 26. There is no safe level of exposure to Lead and even minute amounts of Lead
2 exposure have been shown to permanently reduce mental capacity. 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 found that childhood Lead exposure predicts intellectual
7 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead
8 concentrations from childhood. Mazumdar, M., *et al.*, "Low-Level Environmental Lead
9 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study," *Environmental*
10 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, "Subclinical Lead Toxicity in U.S. Children
11 and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the
12 smallest detectable amount of blood Lead levels in children can mean the difference between an
13 A or B grade in school).

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

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

25 29. Lead is found in the fabric and/or material from which many Fashion Accessories
26 are made. Lead is found in Fashion Accessories as a stabilizer in the vinyl or imitation leather
27 materials, as a chemical ingredient in some of the dyes, paints, and other coloring agents used in
28 Fashion Accessories and in the chemicals used in the leather tanning process. Lead is also found

1 in the metallic components such as zippers, zipper pulls, and buckles used on some Fashion
2 Accessories.

3 30. Defendants' Fashion Accessories contain sufficient quantities of Lead such that
4 individuals, including pregnant women and children, who wear, use, touch, and/or handle the
5 Fashion Accessories are exposed to Lead through the average use of such Fashion Accessories.
6 The routes of exposure for the violations are ingestion via hand-to-mouth contact after consumers
7 touch and/or handle Fashion Accessories, and dermal absorption directly through the skin when
8 consumers take on or off Fashion Accessories or wear, touch, and/or handle Fashion Accessories.

9 31. Some of the Fashion Accessories are designed for and marketed to children.
10 Young children are also exposed to Lead from Fashion Accessories when they touch or play with
11 Fashion Accessories that are owned or used by their parents or caretakers. In addition, young
12 children are exposed to Lead from Handbags when they eat food that is stored or carried in
13 Handbags or touch or play with non-food items that are stored or carried in Handbags. Additional
14 childhood exposures to Lead occur when children touch their hands to their mouths after their
15 hands have touched Fashion Accessories or items stored or carried in Handbags.

16 32. No clear and reasonable warning is provided with the Fashion Accessories
17 regarding the exposures to Lead which occur through ordinary use of the Fashion Accessories.

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

22 34. More than sixty days prior to naming each Defendant in this lawsuit, CEH
23 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, to
24 the District Attorneys of every county in California, to the City Attorneys of every California city
25 with a population greater than 750,000, and to each of the named Defendants. In compliance with
26 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
27 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
28 time period during which violations occurred; (4) specific descriptions of the violations, including

1 (a) the routes of exposure to listed chemicals from Fashion Accessories, and (b) the specific type
2 of Fashion Accessories sold and used in violation of Proposition 65; and (5) the name of the
3 specific Proposition 65-listed chemical that is the subject of the violations described in each
4 Notice.

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

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

22 37. Defendants both know and intend that consumers in California, including pregnant
23 women and children, will wear, use, touch, and/or handle the Fashion Accessories, thus exposing
24 them to Lead through the average use of the Fashion Accessories.

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

28 39. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to

1 filing this Complaint.

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

7
8 **FIRST CAUSE OF ACTION**
9 **(Violations of Health & Safety Code § 25249.6)**
10 **(Against Belts Defendants Only)**

11 41. CEH realleges and incorporates by reference as if specifically set forth herein
12 Paragraphs 1 through 40, inclusive.

13 42. Lead is a chemical listed by the State of California as known to cause cancer, birth
14 defects, and other reproductive harm.

15 43. By placing their Belts into the stream of commerce, each Belts Defendant is a
16 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

17 44. Belts Defendants know that the average use of their Belts will expose users of their
18 Belts to Lead. Belts Defendants intend that their Belts be used in a manner that results in users of
19 their Belts being exposed to the Lead contained therein.

20 45. Belts Defendants have failed, and continue to fail, to provide clear and reasonable
21 warnings to users of their Belts regarding the exposures to Lead which occur from use of their
22 Belts.

23 46. By committing the acts alleged above, Belts Defendants have at all times relevant
24 to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to
25 Lead without first giving clear and reasonable warnings to such individuals regarding those
26 exposures.

27 Wherefore, CEH prays for judgment against Belts Defendants, as set forth hereafter.
28

1 is a person in the course of doing business within the meaning of Health & Safety Code §
2 25249.11.

3 56. Footwear Defendants know that the average use of their Footwear will expose
4 users of their Footwear to Lead. Footwear Defendants intend that their Footwear be used in a
5 manner that results in users of their Footwear being exposed to the Lead contained therein.

6 57. Footwear Defendants have failed, and continue to fail, to provide clear and
7 reasonable warnings to users of their Footwear regarding the exposures to Lead which occur from
8 use of their Footwear.

9 58. By committing the acts alleged above, Footwear Defendants have at all times
10 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
11 individuals to Lead without first giving clear and reasonable warnings to such individuals
12 regarding those exposures.

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

14 **PRAYER FOR RELIEF**

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

16 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
17 permanently enjoin Defendants from offering Fashion Accessories for sale in California without
18 providing prior clear and reasonable warnings, as CEH shall specify in further application to the
19 Court;

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

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

26 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
27 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and
28

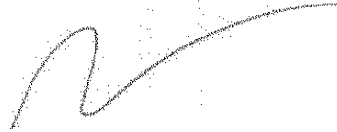
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: June 30, 2020

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, Alexis Pearson, declare:

I am a citizen of the United States and employed in the County of San Francisco, State of California. I am over the age of eighteen (18) years and not a party to this action. My business address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is apearson@lexlawgroup.com

On June 30, 2020 I served the following document(s) on all interested parties in this action by placing a true copy thereof in the manner and at the addresses indicated below:

SECOND AMENDED COMPLAINT

BY MAIL: I am readily familiar with the firm’s practice for collecting and processing mail with the United States Postal Service (“USPS”). Under that practice, mail would be deposited with USPS that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. On this date, I placed sealed envelopes containing the above mentioned documents for collection and mailing following my firm’s ordinary business practices.

BY FACSIMILE: I caused all pages of the document(s) listed above to be transmitted via facsimile to the fax number(s) as indicated and said transmission was reported as complete and without error.

BY ELECTRONIC MAIL: I transmitted a PDF version of the document(s) listed above via email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m. on the date executed.

Please see attached service list

BY PERSONAL DELIVERY: I placed all pages of the document(s) listed above in a sealed envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by hand to the addressee(s) as indicated.

BY OVERNIGHT DELIVERY: I deposited such document(s) in a box or other facility regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 30, 2020, at San Francisco, California.



Alexis Pearson

SERVICE LIST**CEH v. Cornerstone Apparel, Inc., et al.
Case No. RG 18-933923**

ADDRESS	DEFENDANT
Howard Hirsch Joseph Mann Nick Redfield Lexington Law Group 503 Divisadero Street San Francisco, CA 94117 hhirsch@lexlawgroup.com jmann@lexlawgroup.com nredfield@lexlawgroup.com	<i>Plaintiff</i> Center for Environmental Health
Thomas L. Van Wyngarden Stephanie Angkadjaja Pillsbury Winthrop Shaw Pittman LLP 725 South Figueroa Street, Suite 2800 Los Angeles, CA 90017 tom.vanwyngarden@pillsburylaw.com stephanie.angkadjaja@pillsburylaw.com	<i>Defendant</i> Walmart Inc. Jet.com, Inc.
Angela Jean Levin Kevin Gilliland Troutman Sanders LLP 5 Park Plaza, Suite 1400 Irvine, CA 92614 angela.levin@troutman.com kevin.gilliland@troutman.com	<i>Defendant</i> Nasty Gal Limited