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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY
AUG 02 2019
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

RG19029736

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

BALI LEATHERS, INC.; TOUR EDGE
MANUFACTURING, INC.; DOLLAR
GENERAL CORPORATION; DOLGENCORP,
LLC; DOLGEN CALIFORNIA, LLC; G-III
APPAREL GROUP, LTD.; AM RETAIL
GROUP, INC.; GORDINI USA, INC.;
CARHARTT, INC.; NIKE, INC.; NIKE USA,
INC.; PETZL AMERICA, INC.; WEST
CHESTER HOLDINGS, INC.; PROTECTIVE
INDUSTRIAL PRODUCTS, INC.; HOME
DEPOT U.S.A., INC.; LOWE'S COMPANIES,
INC.; LOWE'S HOME CENTERS, LLC; ZARA
USA, INC.; and DOES 1 through 300, inclusive,

Defendants.

Case No. _____

**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' failure to warn individuals in
6 California that they are being exposed to chromium (hexavalent compounds) (referred to herein
7 as "hexavalent chromium"), a chemical known to the State of California to cause cancer and
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of three types of gloves made with leather materials,
10 which for purposes of this complaint are broken into three groups: (1) fashion and driving gloves
11 ("Fashion and Driving Gloves"); (2) sports gloves ("Sports Gloves"); and (3) work and gardening
12 gloves ("Work and Gardening Gloves"). Fashion and Driving Gloves, Sports Gloves and Work
13 and Gardening Gloves are collectively referred to herein as "Gloves." Hexavalent chromium is
14 present in and leaches out of the leather parts of the Gloves. Consumers, including women and
15 men of child bearing age, are exposed to hexavalent chromium when they wear, touch or handle
16 the Gloves.

17 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et seq.*, it is
18 unlawful for businesses to knowingly and intentionally expose individuals in California to
19 chemicals known to the State to cause cancer, birth defects or other reproductive harm without
20 first providing clear and reasonable warnings to exposed individuals. Defendants introduce
21 Gloves containing significant quantities of hexavalent chromium in the leather parts of the Gloves
22 into the California marketplace, thereby exposing people who use the Gloves to hexavalent
23 chromium.

24 3. Despite the fact that Defendants expose women and men of child bearing age and
25 other individuals to hexavalent chromium, Defendants provide no warnings whatsoever about the
26 carcinogenic or reproductive hazards associated with hexavalent chromium exposure resulting
27 from use of the Gloves sold by Defendants. Defendants' conduct thus violates the warning
28 provision of Proposition 65. Health & Safety Code §25249.6.

PARTIES

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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 millions 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 BALI LEATHERS, INC. is a person in the course of doing business
14 within the meaning of Health & Safety Code §25249.11. Defendant BALI LEATHERS, INC.
15 manufactures, distributes and/or sells Sports Gloves that are sold or used in California.

16 6. Defendant TOUR EDGE MANUFACTURING, INC. is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. Defendant TOUR
18 EDGE MANUFACTURING, INC. manufactures, distributes and/or sells Sports Gloves that are
19 sold or used in California.

20 7. Defendant DOLLAR GENERAL CORPORATION is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Defendant DOLLAR
22 GENERAL CORPORATION sells Fashion and Driving Gloves that are sold or used in
23 California. Defendant DOLLAR GENERAL CORPORATION’s Fashion and Driving Gloves are
24 sold under a brand or trademark that is owned or licensed by DOLLAR GENERAL
25 CORPORATION or an affiliated entity.

26 8. Defendant DOLGENCORP, LLC is a person in the course of doing business
27 within the meaning of Health & Safety Code §25249.11. Defendant DOLGENCORP, LLC sells
28 Fashion and Driving Gloves that are sold or used in California. Defendant DOLGENCORP,

1 LLC's Fashion and Driving Gloves are sold under a brand or trademark that is owned or licensed
2 by DOLGENCORP, LLC or an affiliated entity.

3 9. Defendant DOLGEN CALIFORNIA, LLC is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. Defendant DOLGEN
5 CALIFORNIA, LLC sells Fashion and Driving Gloves that are sold or used in California.
6 Defendant DOLGEN CALIFORNIA, LLC'S Fashion and Driving Gloves are sold under a brand
7 or trademark that is owned or licensed by DOLGEN CALIFORNIA, LLC or an affiliated entity.

8 10. Defendant G-III APPAREL GROUP, LTD. is a person in the course of doing
9 business within the meaning of Health & Safety Code §25249.11. Defendant G-III APPAREL
10 GROUP, LTD. sells Fashion and Driving Gloves that are sold or used in California. Defendant
11 G-III APPAREL GROUP, LTD.'s Fashion and Driving Gloves are sold under a brand or
12 trademark that is owned or licensed by G-III APPAREL GROUP, LTD. or an affiliated entity.

13 11. Defendant AM RETAIL GROUP, INC. is a person in the course of doing business
14 within the meaning of Health & Safety Code §25249.11. Defendant AM RETAIL GROUP, INC.
15 sells Fashion and Driving Gloves that are sold or used in California. Defendant AM RETAIL
16 GROUP, INC.'s Fashion and Driving Gloves are sold under a brand or trademark that is owned
17 or licensed by AM RETAIL GROUP, INC. or an affiliated entity.

18 12. Defendant GORDINI USA, INC. is a person in the course of doing business
19 within the meaning of Health & Safety Code §25249.11. Defendant GORDINI USA, INC.
20 manufactures, distributes and/or sells Work Gloves that are sold or used in California.

21 13. Defendant CARHARTT, INC. is a person in the course of doing business within
22 the meaning of Health & Safety Code §25249.11. Defendant CARHARTT, INC. manufactures,
23 distributes and/or sells Work Gloves that are sold or used in California.

24 14. Defendant NIKE, INC. is a person in the course of doing business within the
25 meaning of Health & Safety Code §25249.11. Defendant NIKE, INC. manufactures, distributes
26 and/or sells Sports Gloves that are sold or used in California.

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1 15. Defendant NIKE USA, INC. is a person in the course of doing business within the
2 meaning of Health & Safety Code §25249.11. Defendant NIKE USA, INC. manufactures,
3 distributes and/or sells Sports Gloves that are sold or used in California.

4 16. Defendant PETZL AMERICA, INC. is a person in the course of doing business
5 within the meaning of Health & Safety Code §25249.11. Defendant PETZL AMERICA, INC.
6 manufactures, distributes and/or sells Sports Gloves that are sold or used in California.

7 17. Defendant WEST CHESTER HOLDINGS, INC. is a person in the course of doing
8 business within the meaning of Health & Safety Code §25249.11. Defendant WEST CHESTER
9 HOLDINGS, INC. manufactures, distributes and/or sells Work and Gardening Gloves that are
10 sold or used in California.

11 18. Defendant PROTECTIVE INDUSTRIAL PRODUCTS, INC. is a person in the
12 course of doing business within the meaning of Health & Safety Code §25249.11. Defendant
13 PROTECTIVE INDUSTRIAL PRODUCTS, INC. manufactures, distributes and/or sells Work
14 and Gardening Gloves that are sold or used in California.

15 19. Defendant HOME DEPOT U.S.A., INC. is a person in the course of doing
16 business within the meaning of Health & Safety Code §25249.11. Defendant HOME DEPOT
17 U.S.A., INC. sells Work and Gardening Gloves that are sold or used in California. Defendant
18 HOME DEPOT U.S.A., INC.'s Work and Gardening Gloves are sold under a brand or trademark
19 that is owned or licensed by HOME DEPOT U.S.A., INC. or an affiliated entity.

20 20. Defendant LOWE'S COMPANIES, INC. is a person in the course of doing
21 business within the meaning of Health & Safety Code §25249.11. Defendant LOWE'S
22 COMPANIES, INC. sells Work and Gardening Gloves that are sold or used in California. CEH's
23 claims in this action are limited to Work and Gardening Gloves that are supplied by Defendant
24 WEST CHESTER HOLDINGS, INC and/or Defendant PROTECTIVE INDUSTRIAL
25 PRODUCTS, INC.

26 21. Defendant LOWE'S HOME CENTERS, LLC is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Defendant LOWE'S HOME
28 CENTERS, LLC sells Work and Gardening Gloves that are sold or used in California. CEH's

1 claims in this action are limited to Work and Gardening Gloves that are supplied by Defendant
2 WEST CHESTER HOLDINGS, INC and/or Defendant PROTECTIVE INDUSTRIAL
3 PRODUCTS, INC.

4 22. Defendant ZARA USA, INC. is a person in the course of doing business within the
5 meaning of Health & Safety Code §25249.11. Defendant ZARA USA, INC. sells Driving and
6 Fashion Gloves that are sold or used in California. ZARA USA, INC.'s Fashion and Driving
7 Gloves are sold under a brand or trademark that is owned or licensed by ZARA USA, INC. or an
8 affiliated entity.

9 23. DOES 1 through 100 are each a person in the course of doing business within the
10 meaning of Health & Safety Code §25249.11. DOES 1 through 100 sell Sports Gloves that are
11 sold or used in California.

12 24. DOES 101 through 200 are each a person in the course of doing business within
13 the meaning of Health & Safety Code §25249.11. DOES 101 through 200 sell Fashion and
14 Driving Gloves that are sold or used in California.

15 25. DOES 201 through 300 are each a person in the course of doing business within
16 the meaning of Health & Safety Code §25249.11. DOES 201 through 300 sell Work and
17 Gardening Gloves that are sold or used in California.

18 26. The true names of DOES 1 through 300 are either unknown to CEH at this time or
19 the applicable time period before which CEH may file a Proposition 65 action has not run. When
20 their identities are ascertained or the applicable time period before which CEH may file a
21 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

22 27. The defendants identified in paragraphs 5 through 22 and DOES 1 through 300 are
23 collectively referred to herein as "Defendants."

24 **JURISDICTION AND VENUE**

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

1 reproductive toxicity,” which means harm to the female reproductive system, and “male
2 reproductive toxicity,” which means harm to the male reproductive system. 27 California Code
3 of Regulations (“C.C.R.”) §27001(c). On December 19, 2009, one year after it was listed as a
4 chemical known to cause reproductive toxicity, hexavalent chromium became subject to the clear
5 and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Id.*;
6 Health & Safety Code §25249.10(b).

7 35. Exposures to hexavalent chromium are of particular concern in light of the highly
8 toxic nature of the chemical. Numerous studies have demonstrated adverse developmental effects
9 resulting from exposure to hexavalent chromium, including increased postimplantation loss,
10 decreased number of live fetuses/litter, decreased fetal weight, internal and skeletal
11 malformations, delayed sexual maturation in offspring, decreased sperm count, and increased
12 percentage of abnormal sperm. *See* Agency for Toxic Substances and Disease Registry
13 (“ASTDR”), U.S. Department of Health & Human Services, *Toxicological Profile for Chromium*
14 (September 2012), pp. 18-19, available at <https://www.atsdr.cdc.gov/toxprofiles/tp7.pdf> (last
15 visited August 1, 2019). In addition, studies using rats and mice have shown that exposure to
16 hexavalent chromium causes a variety of cancers including cancers of the gastrointestinal tract,
17 stomach, tongue and small intestine. *Id.* pp. 21-23.

18 36. The leather materials in the Gloves are made through tanning. Tanning is the
19 process of treating animal hide to stabilize the resulting material so that it will not rot or harden
20 into an unusable form when exposed to heat, water or other environmental media. The tanning
21 process first involves preparing the hide by scraping it clean of meat, fat and hair. The hide is
22 then chemically treated and tanned. While some leather is tanned through chemicals found in
23 vegetables, today trivalent chromium is the most common chemical used in the leather tanning
24 process. If strict protocols are not observed, the trivalent chromium transforms into hexavalent
25 chromium and residue of the hexavalent chromium remains present in and leaches out of the
26 finished leather.

27 37. The leather parts of Defendants’ Gloves contain sufficient quantities of hexavalent
28 chromium such that individuals who wear, touch or handle the Gloves are exposed to a significant

1 amount of hexavalent chromium. The primary routes of exposure for the violations are: (1)
2 dermal absorption directly through the skin when consumers wear, touch or handle the Gloves or
3 otherwise have direct skin to leather contact with the leather parts of the Gloves; and (2) ingestion
4 via hand to mouth contact after consumers wear, touch or handle the Gloves. These exposures
5 occur in homes, workplaces and everywhere else throughout California where the Gloves are sold
6 and used.

7 38. No clear and reasonable warning is provided with Defendants' Gloves regarding
8 the carcinogenic or reproductive hazards of hexavalent chromium.

9 39. Any person acting in the public interest has standing to enforce violations of
10 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
11 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
12 within such time. Health & Safety Code §25249.7(d).

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

23 41. CEH also sent a Certificate of Merit for each Notice to the California Attorney
24 General, to the District Attorneys of every county in California, to the City Attorneys of every
25 California city with a population greater than 750,000, and to each of the named Defendants. In
26 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate
27 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and
28 appropriate experience or expertise who reviewed facts, studies, or other data regarding the

1 exposures to hexavalent chromium alleged in each Notice; and (2) based on the information
2 obtained through such consultations, believes that there is a reasonable and meritorious case for a
3 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
4 & Safety Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney
5 General included factual information – provided on a confidential basis – sufficient to establish
6 the basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel
7 and the facts, studies, or other data reviewed by such persons.

8 42. None of the public prosecutors with the authority to prosecute violations of
9 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
10 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s
11 Notices regarding hexavalent chromium in the Gloves.

12 43. Defendants both know and intend that individuals, including women and men of
13 child bearing age, will wear, touch or handle the Gloves, thus exposing them to hexavalent
14 chromium.

15 44. Nevertheless, Defendants continue to expose consumers, including women and
16 men of child bearing age, to hexavalent chromium without prior clear and reasonable warnings
17 regarding the carcinogenic or reproductive hazards of hexavalent chromium.

18 45. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
19 filing this Complaint.

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

25 **FIRST CAUSE OF ACTION**
26 **(Violations of Health & Safety Code §25249.6)**
27 **(Against Sports Gloves Defendants Only)**

28 47. CEH realleges and incorporates by reference as if specifically set forth herein each

1 of the preceding paragraphs.

2 48. By placing their Sports Gloves into the stream of commerce, Defendants Nike,
3 Inc., Nike USA, Inc., Bali Leathers, Inc., Tour Edge Manufacturing, Inc., Petzl America, Inc., and
4 Does 1 through 100 (collectively, the “Sports Gloves Defendants”) are each a person in the
5 course of doing business within the meaning of Health & Safety Code §25249.11.

6 49. Hexavalent chromium is a chemical listed by the State of California as known to
7 cause cancer, birth defects, and other reproductive harm.

8 50. The Sports Gloves Defendants know that average use of their Sports Gloves will
9 expose users to hexavalent chromium. Sports Gloves Defendants intend that their Sports Gloves
10 be used in a manner that results in exposures to hexavalent chromium.

11 51. The Sports Gloves Defendants have failed, and continue to fail, to provide clear
12 and reasonable warnings regarding the carcinogenicity and reproductive toxicity of hexavalent
13 chromium to users of their Sports Gloves.

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

18 **SECOND CAUSE OF ACTION**
19 **(Violations of Health & Safety Code §25249.6)**
20 **(Against Fashion and Driving Gloves Defendants Only)**

21 53. CEH realleges and incorporates by reference as if specifically set forth herein each
22 of the preceding paragraphs.

23 54. By placing their Fashion and Driving Gloves into the stream of commerce,
24 Defendants Dollar General Corporation, Dolgencorp, LLC, Dolgen California, LLC, G-III
25 Apparel Group, Ltd., AM Retail Group, Inc., Zara USA, Inc., and Does 101 through 200
26 (collectively, the “Fashion and Driving Gloves Defendants”) are each a person in the course of
27 doing business within the meaning of Health & Safety Code §25249.11.
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1 Gloves Defendants intend that their Work and Gardening Gloves be used in a manner that results
2 in exposures to hexavalent chromium.

3 63. The Work and Gardening Gloves Defendants have failed, and continue to fail, to
4 provide clear and reasonable warnings regarding the carcinogenicity and reproductive toxicity of
5 hexavalent chromium to users of their Work and Gardening Gloves.

6 64. By committing the acts alleged above, the Work and Gardening Gloves
7 Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and
8 intentionally exposing individuals to hexavalent chromium without first giving clear and
9 reasonable warnings to such individuals regarding the carcinogenicity and reproductive toxicity
10 of hexavalent chromium.

11 **PRAYER FOR RELIEF**

12 CEH prays for judgment against Defendants as follows:

13 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
14 permanently enjoin Defendants from offering the Gloves for sale in California without either
15 reformulating the Gloves such that no Proposition 65 warnings are required or providing prior
16 clear and reasonable warnings, as CEH shall specify in further application to the Court;

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

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

23 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
24 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: August 2, 2019

Respectfully submitted,

LEXINGTON LAW GROUP



Eric S. Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH