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ALAMEDA COUNTY

November 26, 2019

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:

RG19034870

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11 CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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

Plaintiff,

v.

16
17 TOMMY BAHAMA GROUP, INC.; GBG USA
18 INC.; AUTHENTIC BRANDS GROUP LLC;
19 KENNETH COLE PRODUCTIONS, INC.;
20 WOLVERINE WORLD WIDE, INC.; SPERRY
21 TOP-SIDER, LLC; NORDSTROM, INC.;
22 URBAN OUTFITTERS, INC.; URBAN
23 OUTFITTERS WEST LLC; EDDIE BAUER
24 LLC; STEVEN MADDEN, LTD.; STEVEN
25 MADDEN RETAIL, INC.; TORY BURCH LLC;
26 SAKS INCORPORATED; SAKS & COMPANY
27 LLC; SAKS DIRECT, LLC; II&M IIENNES &
28 MAURITZ LP; WEYCO GROUP, INC.;
DESIGNER BRANDS INC.; DSW SHOE
WAREHOUSE, INC.; and DOES 1 through 300,
inclusive,

Defendants.

Case No. RG19034870

ASSIGNED FOR ALL PURPOSES TO:
Judge Winifred Y. Smith, Department 21**FIRST 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 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) ("hexavalent
7 chromium"), a chemical known to the State of California to cause cancer and reproductive harm.
8 Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale
9 and use of footwear made with leather materials ("Footwear"). Hexavalent chromium is present
10 in and leaches out of the leather parts of the Footwear. Consumers, including women and men of
11 child bearing age, are exposed to hexavalent chromium when they wear, touch or handle the
12 Footwear.

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

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

25 **PARTIES**

26 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
27 corporation dedicated to protecting the public from environmental health hazards and toxic
28 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of

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

9 5. Defendant GBG USA INC. is a person in the course of doing business within the
10 meaning of Health & Safety Code §25249.11. Defendant GBG USA INC. manufactures,
11 distributes and/or sells Footwear that is sold or worn in California.

12 6. Defendant AUTHENTIC BRANDS GROUP LLC is a person in the course of
13 doing business within the meaning of Health & Safety Code §25249.11. Defendant
14 AUTHENTIC BRANDS GROUP LLC manufactures, distributes and/or sells Footwear that is
15 sold or worn in California.

16 7. Defendant KENNETH COLE PRODUCTIONS, INC. is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. Defendant KENNETH
18 COLE PRODUCTIONS, INC. manufactures, distributes and/or sells Footwear that is sold or
19 worn in California.

20 8. Defendant WOLVERINE WORLD WIDE, INC. is a person in the course of doing
21 business within the meaning of Health & Safety Code §25249.11. Defendant WOLVERINE
22 WORLD WIDE, INC. manufactures, distributes and/or sells Footwear that is sold or worn in
23 California.

24 9. Defendant SPERRY TOP-SIDER, LLC is a person in the course of doing business
25 within the meaning of Health & Safety Code §25249.11. Defendant SPERRY TOP-SIDER, LLC
26 manufactures, distributes and/or sells Footwear that is sold or worn in California.

27 10. Defendant NORDSTROM, INC. is a person in the course of doing business within
28 the meaning of Health & Safety Code §25249.11. Defendant NORDSTROM, INC. sells

1 Footwear that is sold or worn in California. CEH's claims as to NORDSTROM, INC. are limited
2 to Footwear that is supplied by Defendants GBG USA INC., AUTHENTIC BRANDS GROUP
3 LLC, KENNETH COLE PRODUCTIONS, INC., WOLVERINE WORLD WIDE, INC., and/or
4 SPERRY TOP-SIDER, LLC.

5 11. Defendant URBAN OUTFITTERS, INC. is a person in the course of doing
6 business within the meaning of Health & Safety Code §25249.11. Defendant URBAN
7 OUTFITTERS, INC. sells Footwear that is sold or worn in California. Defendant URBAN
8 OUTFITTERS, INC.'s Footwear is sold under a brand or trademark that is owned or licensed by
9 URBAN OUTFITTERS, INC. or an affiliated entity.

10 12. Defendant URBAN OUTFITTERS WEST LLC is a person in the course of doing
11 business within the meaning of Health & Safety Code §25249.11. Defendant URBAN
12 OUTFITTERS WEST LLC sells Footwear that is sold or worn in California. Defendant URBAN
13 OUTFITTERS WEST LLC's Footwear is sold under a brand or trademark that is owned or
14 licensed by URBAN OUTFITTERS WEST LLC or an affiliated entity.

15 13. Defendant EDDIE BAUER LLC is a person in the course of doing business within
16 the meaning of Health & Safety Code §25249.11. Defendant EDDIE BAUER LLC
17 manufactures, distributes and/or sells Footwear that is sold or worn in California.

18 14. Defendant TOMMY BAHAMA GROUP, INC. is a person in the course of doing
19 business within the meaning of Health & Safety Code §25249.11. Defendant TOMMY
20 BAHAMA GROUP, INC. manufactures, distributes and/or sells Footwear that is sold or worn in
21 California.

22 15. Defendant STEVEN MADDEN, LTD. is a person in the course of doing business
23 within the meaning of Health & Safety Code §25249.11. Defendant STEVEN MADDEN, LTD.
24 manufactures, distributes and/or sells Footwear that is sold or worn in California.

25 16. Defendant STEVEN MADDEN RETAIL, INC. is a person in the course of doing
26 business within the meaning of Health & Safety Code §25249.11. Defendant STEVEN
27 MADDEN RETAIL, INC. manufactures, distributes and/or sells Footwear that is sold or worn in
28 California.

1 17. Defendant TORY BURCH LLC is a person in the course of doing business within
2 the meaning of Health & Safety Code §25249.11. Defendant TORY BURCH LLC manufactures,
3 distributes and/or sells Footwear that is sold or worn in California.

4 18. Defendant SAKS INCORPORATED is a person in the course of doing business
5 within the meaning of Health & Safety Code §25249.11. Defendant SAKS INCORPORATED
6 sells Footwear that is sold or worn in California. CEH's claims as to SAKS INCORPORATED
7 are limited to Footwear that is supplied by Defendant TORY BURCH LLC.

8 19. Defendant SAKS & COMPANY LLC is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. Defendant SAKS & COMPANY LLC
10 sells Footwear that is sold or worn in California. CEH's claims as to SAKS & COMPANY LLC
11 are limited to Footwear that is supplied by Defendant TORY BURCH LLC.

12 20. Defendant SAKS DIRECT, LLC is a person in the course of doing business within
13 the meaning of Health & Safety Code §25249.11. Defendant SAKS DIRECT, LLC sells
14 Footwear that is sold or worn in California. CEH's claims as to SAKS DIRECT, LLC are limited
15 to Footwear that is supplied by Defendant TORY BURCH LLC.

16 21. Defendant WEYCO GROUP, INC. is a person in the course of doing business
17 within the meaning of Health & Safety Code §25249.11. Defendant WEYCO GROUP, INC.
18 manufactures, distributes and/or sells Footwear that is sold or worn in California.

19 22. Defendant DESIGNER BRANDS INC. is a person in the course of doing business
20 within the meaning of Health & Safety Code §25249.11. Defendant DESIGNER BRANDS INC.
21 sells Footwear that is sold or worn in California. CEH's claims as to DESIGNER BRANDS INC.
22 are limited to Footwear that is supplied by Defendant WEYCO GROUP, INC.

23 23. Defendant DSW SHOE WAREHOUSE, INC. is a person in the course of doing
24 business within the meaning of Health & Safety Code §25249.11. Defendant DSW SHOE
25 WAREHOUSE, INC. sells Footwear that is sold or worn in California. CEH's claims as to DSW
26 SHOE WAREHOUSE, INC. are limited to Footwear that is supplied by Defendant WEYCO
27 GROUP, INC.

24. Defendant H&M HENNES & MAURITZ LP is a person in the course of doing business within the meaning of Health & Safety Code §25249.11. Defendant H&M HENNES & MAURITZ LP sells Footwear that is sold or worn in California. Defendant H&M HENNES & MAURITZ LP's Footwear is sold under a brand or trademark that is owned or licensed by H&M HENNES & MAURITZ LP or an affiliated entity.

25. DOES 1 through 300 are each a person in the course of doing business within the meaning of Health & Safety Code §25249.11. DOES 1 through 300 sell Footwear that are sold or worn in California.

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

27. The defendants identified in paragraphs 5 through 24 and DOES 1 through 300 are collectively referred to herein as “Defendants.”

JURISDICTION AND VENUE

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

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

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

BACKGROUND FACTS

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

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

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

33. On February 27, 1987, the State of California officially listed chromium (hexavalent compounds) as a chemical known to cause cancer. On February 27, 1988, one year after it was listed as a chemical known to cause cancer, hexavalent chromium became subject to the clear and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §27001(b); Health & Safety Code §25249.10(b).

34. On December 19, 2008, the State of California officially listed chromium (hexavalent compounds) as a chemical known to cause reproductive toxicity. Hexavalent chromium is specifically identified as a reproductive toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to the developing fetus, “female reproductive toxicity,” which means harm to the female reproductive system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On December 19, 2009, one year after it was listed as a chemical known to cause reproductive toxicity, hexavalent chromium became subject to the clear and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Id.*; Health & Safety Code §25249.10(b).

1 35. Exposures to hexavalent chromium are of particular concern in light of the highly
2 toxic nature of the chemical. Numerous studies have demonstrated adverse developmental effects
3 resulting from exposure to hexavalent chromium, including increased postimplantation loss,
4 decreased number of live fetuses/litter, decreased fetal weight, internal and skeletal
5 malformations, delayed sexual maturation in offspring, decreased sperm count, and increased
6 percentage of abnormal sperm. *See* Agency for Toxic Substances and Disease Registry
7 (“ASTDR”), U.S. Department of Health & Human Services, *Toxicological Profile for Chromium*
8 (September 2012), pp. 18-19, *available at* <https://www.atsdr.cdc.gov/toxprofiles/tp7.pdf> (last
9 visited November 25, 2019). In addition, studies using rats and mice have shown that exposure to
10 hexavalent chromium causes a variety of cancers including cancers of the gastrointestinal tract,
11 stomach, tongue and small intestine. *Id.* pp. 21-23.

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

21 37. The leather parts of Defendants’ Footwear contain sufficient quantities of
22 hexavalent chromium such that individuals who wear, touch or handle the Footwear are exposed
23 to a significant amount of hexavalent chromium. The primary routes of exposure for the
24 violations are: (1) dermal absorption directly through the skin when consumers wear, touch or
25 handle the Footwear or otherwise have direct skin to leather contact with the leather parts of the
26 Footwear; and (2) ingestion via hand to mouth contact after consumers wear, touch or handle the
27 Footwear. These exposures occur in homes, workplaces and everywhere else throughout
28 California where the Footwear are sold and worn.

1 38. No clear and reasonable warning is provided with Defendants' Footwear
2 regarding the carcinogenic or reproductive hazards of hexavalent chromium.

3 39. 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 40. 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 following
12 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
13 during which violations occurred; (4) specific descriptions of the violations, including (a) the
14 routes of exposure to hexavalent chromium from the Footwear, and (b) the specific type of
15 Footwear sold and worn in violation of Proposition 65; and (5) the name of the specific
16 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

17 41. 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 hexavalent chromium alleged in each Notice; and (2) based on the information
24 obtained through such consultations, believes that there is a reasonable and meritorious case for a
25 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
26 & Safety Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney
27 General included factual information – provided on a confidential basis – sufficient to establish
28

1 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
2 and the facts, studies, or other data reviewed by such persons.

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

7 43. Defendants know that their Footwear contains and leaches hexavalent chromium.
8 In fact, a significant portion of the leather used in Defendants' Footwear is tested for the presence
9 and leachability of hexavalent chromium. Defendants thus both know and intend that individuals,
10 including women and men of child bearing age, will wear, touch or handle the Footwear, thereby
11 exposing them to hexavalent chromium.

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

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

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

22 **FIRST CAUSE OF ACTION**
23 **(Violations of Health & Safety Code §25249.6)**

24 47. CEH realleges and incorporates by reference as if specifically set forth herein each
25 of the preceding paragraphs.

26 48. By placing their Footwear into the stream of commerce, Defendants are each a
27 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
28

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

3 50. Defendants know that average use of their Footwear will expose users to
4 hexavalent chromium. Defendants intend that their Footwear be used in a manner that results in
5 exposures to hexavalent chromium.

6 51. Defendants have failed, and continue to fail, to provide clear and reasonable
7 warnings regarding the carcinogenicity and reproductive toxicity of hexavalent chromium to users
8 of their Footwear.

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

13 **PRAYER FOR RELIEF**

14 CEH prays for judgment against Defendants as follows:

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

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

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

25 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
26 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: November 26, 2019

Respectfully submitted,

LEXINGTON LAW GROUP



Eric S. Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH