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6
 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 8 FOR THE COUNTY OF LOS ANGELES

9
 10 APS&EE, LLC, a limited liability company,)
 11 Plaintiff,)
 12 v.)
 13 ZOETOP BUSINESS CO., LIMITED, a)
 14 corporation, SHEIN FASHION GROUP,)
 15 INC., a corporation, and DOES 1 through 100,)
 16 inclusive,)
 17 Defendants.)

CASE NO. **20STCV35570**

**PLAINTIFF'S COMPLAINT FOR
 CIVIL PENALTIES AND INJUNCTIVE
 RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:
 Dept.:
 Compl. Filed:

Unlimited Jurisdiction

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1 **INTRODUCTION**

2 1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public
3 interest of the citizens of the State of California, a representative action to enforce the People’s
4 right to be informed of the presence of Lead, Di-n-Butyl Phthalate (“DBP”) and Di (2-
5 ethylhexyl) Phthalate (“DEHP”), chemicals known to the State of California to cause cancer and
6 birth defects or other reproductive harm, found in handbags, purses, and clutches, sold by
7 Defendants.

8 2. The purpose of this Complaint is to remedy Defendants’ continuing failure to
9 warn California residents about the risk of exposure to the Lead, DBP and/or DEHP in the
10 handbags, purses, and clutches manufactured, distributed, sold, and/or offered for sale to
11 consumers in California.

12 3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
13 the handbags, purses, and clutches, including but not limited to Bag 03191018621 and Bag
14 03191105517, online through Defendants’ websites: Romwe.com, Shein.com, Sheinoutlet.com,
15 and Emmacloth.com, and at temporary physical pop-up retail stores operated by Defendants. The
16 products described in this paragraph shall hereinafter be referred to as the “Products”.

17 4. Children and adults are exposed to the Lead, DBP, and/or DEHP, when they use,
18 touch, handle, play with, repair, maintain, install, and clean the Products.

19 5. Hazardous levels of the Lead, DBP, and/or DEHP are found in the accessible
20 surface areas of the Products manufactured, distributed, sold, and/or offered for sale by
21 Defendants to consumers in California.

22 6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)
23 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and
24 intentionally expose any individual to a chemical known to the state to cause cancer or
25 reproductive toxicity without first giving clear and reasonable warning to such individual...”

26 7. Studies repeatedly conclude that exposure to the Lead, DBP, and/or DEHP is
27 hazardous to the health of children and adults. Children are especially vulnerable to the toxic
28 effects of Lead, DBP, and DEHP. Accordingly, California has listed the Lead as a chemical

1 known to the state to cause cancer and birth defects or other reproductive harm; DBP is listed by
2 the State of California as known to cause birth defects and other reproductive harm; and DEHP is
3 listed as known to cause cancer and reproductive toxicity, and therefore the listed chemicals are
4 subject to Proposition 65 warning requirements.

5 8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
6 the Products without the required warnings. Defendants' conduct violates the warning
7 requirements of Proposition 65.

8 **PARTIES**

9 9. Plaintiff is an organization based in California acting in the public interest.
10 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code
11 section 25249.7(d).

12 10. Defendant, ZOETOP BUSINESS CO., LIMITED is a person in the course of
13 doing business within the meaning of California Health and Safety Code section 25249.11.
14 ZOETOP BUSINESS CO., LIMITED manufactures, distributes, and/or sells the Products for
15 sale and use in California.

16 11. Defendant, SHEIN FASHION GROUP, INC. is a person in the course of doing
17 business within the meaning of California Health and Safety Code section 25249.11. SHEIN
18 FASHION GROUP, INC. manufactures, distributes, and/or sells the Products for sale and use in
19 California.

20 12. DOES 1 through 100 are each a person in the course of doing business within the
21 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100
22 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of
23 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,
24 Plaintiff's Complaint shall be amended to reflect their true names.

25 13. The defendants identified in paragraphs 10-12 shall collectively be referred to
26 herein as "Defendants".

27 **JURISDICTION AND VENUE**

28 14. This Court has jurisdiction over this action pursuant to California Health and

1 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,
2 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a
3 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited
4 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent
5 injunctive relief.

6 15. This Court has jurisdiction over Defendants because each is a person, firm,
7 corporation, or association with sufficient minimum contacts in the State of California, or
8 otherwise purposefully avails itself to the California market as to render jurisdiction by the
9 California courts consistent with traditional notions of fair play and substantial justice.

10 16. Venue is proper in Los Angeles County Superior Court because one or more
11 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,
12 and/or because Defendants conducted, and continue to conduct, business in this County with
13 respect to the Products.

14 **FIRST CAUSE OF ACTION**

15 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

16 17. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 16, inclusive.

18 18. On March 14, 2019, Plaintiff issued a Sixty-Day Notice of Violation to ZOETOP
19 BUSINESS CO., LIMITED, SHEIN FASHION GROUP, INC., other violators, and the various
20 public enforcement agencies regarding the alleged violation of Proposition 65 with respect to
21 exposures to Lead, DBP, and DEHP from handbags, purses, and clutches sold from the website
22 Shein.com and the temporary physical pop-up retail stores. The March 14, 2019 Notice was
23 settled by out-of-court settlement agreement on July 25, 2019; however, Plaintiff alleges that
24 Defendants breached that settlement agreement. Moreover, Plaintiff alleges additional ongoing
25 violations by Defendants via the other websites listed in Paragraph 3.

26 19. On May 12, 2020, Plaintiff issued a Sixty-Day Notice of Violation (the "Notice"),
27 along with a Certificate of Merit, to ZOETOP BUSINESS CO., LIMITED, SHEIN FASHION
28 GROUP, INC., and the various public enforcement agencies with respect to the Proposition 65

1 violations. In addition, on said date, in compliance with Health & Safety Code section
2 25249.7(d), Plaintiff provided confidential factual information sufficient to establish the basis for
3 the Certificate of Merit to the California Attorney General.

4 20. None of the public prosecutors with the authority to prosecute Proposition 65
5 violations has commenced and/or is diligently prosecuting the causes of action against
6 Defendants based on the claims asserted in Plaintiff's Notice.

7 21. By placing the Products into the stream of commerce, each Defendant is a person
8 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

9 22. Defendants knew and intended that consumers, including children, will use,
10 touch, handle, play with, repair, maintain, install, and clean the Products.

11 23. Defendants knew that the Products contain Lead, DBP, and/or DEHP.
12 Defendants, who are in the business of marketing consumer goods such as purses and handbags,
13 also should have known or have constructive knowledge that the Products contain Lead, DBP,
14 and/or DEHP from widespread media coverage and/or other channels of information concerning
15 the presence of Lead, DBP, and/or DEHP in similar material. Additionally, Defendants had been
16 previously served with various Proposition 65 60-Day Notices of Violation regarding the
17 presence of these listed chemicals in their products.

18 24. Lead is a chemical listed by the State of California as known to cause cancer and
19 birth defects or other reproductive harm. DBP is listed by the State of California as known to
20 cause birth defects and other reproductive harm. DEHP is listed as known to cause cancer and
21 reproductive toxicity.

22 25. Defendants' Products contain sufficient quantities of the Lead, DBP, and/or
23 DEHP such that consumers, including children, who use, touch, handle, play with, repair,
24 maintain, install, and clean the Products are exposed to unsafe levels of the listed chemicals. The
25 listed chemicals are present in the Products in such a way as to expose individuals to Lead, DBP,
26 and/or DEHP, as exposure is defined by 27 CCR section 25600.1(e): "...that results from a
27 person's acquisition, purchase, storage, consumption, or any reasonably foreseeable use..."
28 Direct and indirect exposure occurs through inhalation, ingestion and/or dermal contact during

1 the reasonably foreseeable use of the Products.

2 26. Defendants knew or should have known that the reasonably foreseeable use of the
3 Products exposes individuals to Lead, DBP, and/or DEHP, through inhalation, ingestion and/or
4 dermal contact.

5 27. Defendants failed to provide a “clear and reasonable warning” to individuals in
6 the State of California who were or could become exposed to Lead, DBP, and/or DEHP during
7 the reasonably foreseeable use of the Products.

8 28. By committing the acts alleged in this Complaint, Defendants have violated
9 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally
10 exposing individuals to Lead, DBP, and/or DEHP without first giving clear and reasonable
11 warnings to such individuals regarding the toxicity of Lead, DBP, and/or DEHP.

12 29. As a result of Defendants’ wrongful conduct, individuals in the State of California
13 have been exposed to Lead, DBP, and/or DEHP through the inhalation, ingestion and/or dermal
14 contact during the reasonably foreseeable use of the Products without a “clear and reasonable
15 warning”, and have suffered and continue to suffer harm, each and every day since at least
16 December 21, 2015.

17 **SECOND CAUSE OF ACTION**

18 **(Breach Of Written Contract)**

19 30. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 29, inclusive.

21 31. Plaintiff and Defendant, ZOETOP BUSINESS CO., LIMITED, executed an out-
22 of-court settlement agreement (“Agreement”) on July 25, 2019 to resolve alleged Proposition 65
23 violations related to unwarned exposures to Lead, DBP, and/or DEHP from handbags, purses,
24 and clutches, sold by Defendant.

25 32. Pursuant to Section 2 of the Agreement, Defendant promised to comply with
26 certain injunctive terms and/or reformulation standards. Defendant breached those duties
27 specified in Section 2 by failing to comply with the reformulation standards and/or warning
28 requirements.

1 33. Attached hereto as Exhibit "A" is a true and correct copy of the Agreement.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

4 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),
5 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation
6 alleged herein;

7 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
8 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering
9 the Products for sale in California without providing "clear and reasonable warnings" as defined
10 by 27 CCR section 25601;

11 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
12 order Defendants to take action to stop ongoing unwarned exposures to Lead, DBP, and DEHP
13 resulting from use of Products sold by Defendants;

14 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or
15 any other applicable theory, grant Plaintiff's reasonable attorneys' fees and costs of suit; and

16 5. Such other and further relief as may be just and proper.

17
18 Dated: September 17, 2020

LAW OFFICES OF LUCAS T. NOVAK

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20 By: 

21 LUCAS T. NOVAK
22 Attorney for Plaintiff, APS&EE, LLC
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EXHIBIT A

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ZOETOP
BUSINESS CO., LIMITED**

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Zoetop Business Co., Limited (“Zoetop”). APS&EE and Zoetop shall hereinafter collectively be referred to as the “Parties”.

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that Zoetop is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that Zoetop and Shein Fashion Group, Inc. (“SFG”) sold Shein handbags, purses, and clutches, including but not limited to lemon bag 160714315, red round bag 180724349, and orange bag 160816309 (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to unsafe levels of Di-n-Butyl Phthalate (“DBP”), Di (2-ethylhexyl) Phthalate also known as Bis (2-ethylhexyl) Phthalate (“DEHP”), and Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. DBP, DEHP, and Lead are potentially subject to Proposition 65 warning requirements because DBP is listed by the State of California as known to cause birth defects and other reproductive harm, DEHP is listed as known to cause cancer and reproductive toxicity, and Lead is known to cause cancer and birth defects or other reproductive harm.

1.2.2 On December 21, 2018, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”) to SFG, and Shein Group Ltd. (“SG”) and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to unwarned exposures to DBP and DEHP from the Products. On January 22, 2019, APS&EE provided a Supplemental Sixty-Day Notice of Violation (the “First Supplemental Notice”) to SFG, SG, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to unwarned exposures to DBP, DEHP, and Lead from the Products. On March 14, 2019, APS&EE provided a Second Supplemental Sixty-Day Notice of Violation (the “Second Supplemental Notice”) to SFG, SG, EC Best Service, Inc. (“EC”), Zoetop, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to unwarned exposures to DBP, DEHP, and Lead from the Products. The Notice, First Supplemental Notice, and Second Supplemental Notice shall hereinafter collectively be referred to as the “Notices.”

1.3 No Admissions

Zoetop, SFG, SG, and EC deny all allegations in APS&EE’s Notices and maintain that the Products have been, and are, in compliance with all laws, and that they have not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Zoetop, SFG, SG, and EC but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

2. INJUNCTIVE RELIEF AND REFORMULATION

2.1 Reformulation

As of the Effective Date, Zoetop shall not distribute, sell or offer for sale the Products in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP or DBP, and no more than 200 parts per million of Lead (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.2 Clear And Reasonable Warnings

2.2.1 For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Zoetop shall use a warning with the capitalized and emboldened wording substantially similar to the following:

(Long-Form Warning):

WARNING: This product can expose you to chemicals including DEHP [and/or DBP and/or Lead]¹, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or

(Short-Form Warning):

**WARNING: Cancer and Reproductive Harm -
www.P65Warnings.ca.gov**

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and

¹ In accordance with 27 Cal. Code Regs., section 25603, operative Aug. 30, 2018, the warning must expressly identify at least one of the Listed Chemicals present in the Product, as applicable. Language within the brackets is optional.

white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

2.2.2 Each Product sold in a physical store in California shall carry a warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. Alternatively, Zoetop may provide the Long-Form warning through an electronic device or process that automatically provides the warning to the purchaser (e.g., such as on a self-checkout screen and not solely on a purchase receipt) prior to completion of the purchase of the consumer product.

2.2.3 Zoetop shall provide the Long-Form warning for each Product it sells on the internet (or the Short-Form Warning, but only if it is also provided on the Product or its label or package) by a clearly marked hyperlink on the product display page, or by otherwise prominently displaying the warning to the purchaser before the purchaser completes his or her purchase of the Product. For Products that Zoetop provides for another entity to sell on the internet, Zoetop shall provide notice to such entity pursuant to 27 Cal. Code Regs. § 25600.2(b) of the warning message to be provided for any online sales of the Product.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Zoetop shall pay a total civil penalty of two thousand five hundred dollars (\$2,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,875.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$625.00) for APS&EE.

Zoetop shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$2,500.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$625.00. Zoetop shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE's Fees And Costs

Zoetop shall reimburse APS&EE's experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, Zoetop shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of twenty two thousand five hundred dollars (\$22,500.00). Zoetop shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 APS&EE's Release Of Zoetop

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases Zoetop, SFG, SG, and EC, and their parents, subsidiaries, affiliates, shareholders, directors, members, officers, employees, attorneys, principals, owners, investors, successors and assignees, as well as their downstream distributors, retailers, and customers (collectively "Releasees"), from any alleged Proposition 65 violation claims that were or could have been asserted based on the facts alleged in APS&EE's Notices regarding failure to warn about exposure to DEHP, DBP, and/or Lead from the Products sold by Zoetop or SFG before and up to the Effective Date.

4.2 Zoetop's Release Of APS&EE

Zoetop, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether

in the course of investigating claims or seeking enforcement of Proposition 65 against Zoetop in this matter. If any Releasee should institute any such action, then APS&EE's release of said Releasee in this Agreement shall be rendered void and unenforceable.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

All correspondence and Notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail or

email, addressed as follows:

<p>TO ZOETOP:</p> <p>Tim Wei Tel: 8613924307655 Email: tim.wei@shein.com</p> <p>With a copy to:</p> <p>Jeffrey Margulies, Esq. Norton Rose Fulbright US LLP 555 South Flower Street Forty-First Floor Los Angeles, CA 90071 Jeff.margulies@nortonrosefulbright.com</p>	<p>TO APS&EE:</p> <p>Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069 lucas.nvk@gmail.com</p>
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8. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

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9. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date: 7/25/19

By: [Signature]
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: July 24, 2019

By: Tim WEI [Signature]
Authorized Representative of Zoetop Business Co., Limited