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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

TOMMY BAHAMA GROUP, INC. *et al.*,

Defendants.

FILED
Superior Court of California
County of Alameda
05/19/2022
Clad File, Executive Officer/Clerk of the Court
By: Sue Pesko Deputy
S. Pesko

Case No. RG 19-034870

ASSIGNED FOR ALL PURPOSES TO:
The Hon. Evelio Grillo, Dept. 21

**THIRD 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. The footwear at issue in this Complaint is
10 limited to footwear for which normal and foreseeable use will result in one or more chrome-
11 tanned leather components coming into direct contact with the skin of the average user's foot or
12 leg while the footwear is worn (*e.g.*, a chrome-tanned leather insole, tongue, liner, unlined upper
13 or strap) ("Footwear"). Hexavalent chromium is present in and leaches out of the leather parts of
14 the Footwear. Consumers, including women and men of child bearing age, are exposed to
15 hexavalent chromium when they wear, touch or handle the Footwear.

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 first providing clear and reasonable warnings to exposed individuals. Defendants introduce
20 Footwear containing significant quantities of hexavalent chromium in the leather parts of the
21 Footwear into the California marketplace, thereby exposing people who wear the Footwear to
22 hexavalent chromium.

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

28

PARTIES

1
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 GBG USA INC. is a person in the course of doing business within the
14 meaning of Health & Safety Code §25249.11. Defendant GBG USA INC. manufactures,
15 distributes and/or sells Footwear that is sold or worn in California.

16 6. 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 7. 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 8. 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 9. 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 its private label Footwear and Footwear that is supplied by Defendant SPERRY TOP-SIDER,
3 LLC.

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

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

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

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

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

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

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1 16. 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 17. 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 Defendants MAGNANNI, INC., JSL STUDIO
8 INTERNATIONAL, LLC, STYLELINE STUDIOS, LLC and JACK ROGERS, LLC.

9 18. Defendant SAKS & COMPANY LLC is a person in the course of doing business
10 within the meaning of Health & Safety Code §25249.11. Defendant SAKS & COMPANY LLC
11 sells Footwear that is sold or worn in California. CEH's claims as to SAKS & COMPANY LLC
12 are limited to Footwear that is supplied by Defendants MAGNANNI, INC., JSL STUDIO
13 INTERNATIONAL, LLC, STYLELINE STUDIOS, LLC and JACK ROGERS, LLC.

14 19. Defendant SAKS DIRECT, LLC is a person in the course of doing business within
15 the meaning of Health & Safety Code §25249.11. Defendant SAKS DIRECT, LLC sells
16 Footwear that is sold or worn in California. CEH's claims as to SAKS DIRECT, LLC are limited
17 to Footwear that is supplied by Defendants MAGNANNI, INC., JSL STUDIO
18 INTERNATIONAL, LLC, STYLELINE STUDIOS, LLC and JACK ROGERS, LLC.

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

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

26 22. Defendant DSW SHOE WAREHOUSE, INC. is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Defendant DSW SHOE
28 WAREHOUSE, INC. sells Footwear that is sold or worn in California. CEH's claims as to DSW

1 SHOE WAREHOUSE, INC. are limited to Footwear that is supplied by Defendant WEYCO
2 GROUP, INC.

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

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

11 25. Defendant ALL SAINTS RETAIL LIMITED is a person in the course of doing
12 business within the meaning of Health & Safety Code §25249.11. Defendant ALL SAINTS
13 RETAIL LIMITED manufactures, distributes and/or sells Footwear that is sold or worn in
14 California.

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

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

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

25 29. Defendant DECKERS OUTDOOR CORPORATION is a person in the course of
26 doing business within the meaning of Health & Safety Code §25249.11. Defendant DECKERS
27 OUTDOOR CORPORATION manufactures, distributes and/or sells Footwear that is sold or
28 worn in California.

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

4 31. Defendant GENESCO, INC. is a person in the course of doing business within the
5 meaning of Health & Safety Code §25249.11. Defendant GENESCO, INC. manufactures,
6 distributes and/or sells Footwear that is sold or worn in California.

7 32. Defendant HUSH PUPPIES RETAIL, INC. is a person in the course of doing
8 business within the meaning of Health & Safety Code §25249.11. Defendant HUSH PUPPIES
9 RETAIL, INC. manufactures, distributes and/or sells Footwear that is sold or worn in California.

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

13 34. Defendant J CREW GROUP, INC. is a person in the course of doing business
14 within the meaning of Health & Safety Code §25249.11. Defendant J CREW GROUP, INC.
15 manufactures, distributes and/or sells Footwear that is sold or worn in California.

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

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

22 37. Defendant MEPHISTO CONCEPT STORES, INC. is a person in the course of
23 doing business within the meaning of Health & Safety Code §25249.11. Defendant MEPHISTO
24 CONCEPT STORES, INC. manufactures, distributes and/or sells Footwear that is sold or worn in
25 California.

26 38. Defendant NISOLO, LLC is a person in the course of doing business within the
27 meaning of Health & Safety Code §25249.11. Defendant NISOLO, LLC manufactures,
28 distributes and/or sells Footwear that is sold or worn in California.

1 39. Defendant MARC JACOBS INTERNATIONAL, LLC is a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11. Defendant MARK
3 JACOBS INTERNATIONAL, LLC manufactures, distributes and/or sells Footwear that is sold
4 or worn in California.

5 40. Defendant VALENTINO U.S.A., INC. is a person in the course of doing business
6 within the meaning of Health & Safety Code §25249.11. Defendant VALENTINO U.S.A., INC.
7 manufactures, distributes and/or sells Footwear that is sold or worn in California.

8 41. Defendant ALDO U.S., INC. is a person in the course of doing business within the
9 meaning of Health & Safety Code §25249.11. Defendant ALDO U.S., INC. manufactures,
10 distributes and/or sells Footwear that is sold or worn in California.

11 42. Defendant PAIGE LLC is a person in the course of doing business within the
12 meaning of Health & Safety Code §25249.11. Defendant PAIGE LLC manufactures, distributes
13 and/or sells Footwear that is sold or worn in California.

14 43. Defendant MAGNANNI, INC. is a person in the course of doing business within
15 the meaning of Health & Safety Code §25249.11. Defendant MAGNANNI, INC. manufactures,
16 distributes and/or sells Footwear that is sold or worn in California.

17 44. Defendant JACK ROGERS LLC is a person in the course of doing business within
18 the meaning of Health & Safety Code §25249.11. Defendant JACK ROGERS LLC
19 manufactures, distributes and/or sells Footwear that is sold or worn in California.

20 45. Defendant SPRING FOOTWEAR CORPORATION is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Defendant SPRING
22 FOOTWEAR CORPORATION manufactures, distributes and/or sells Footwear that is sold or
23 worn in California.

24 46. Defendant RAINBOW SANDALS, INC. is a person in the course of doing
25 business within the meaning of Health & Safety Code §25249.11. Defendant RAINBOW
26 SANDALS, INC. manufactures, distributes and/or sells Footwear that is sold or worn in
27 California.

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

5 48. Defendant SHOES WEST, INC. is a person in the course of doing business within
6 the meaning of Health & Safety Code §25249.11. Defendant SHOES WEST, INC. manufactures,
7 distributes and/or sells Footwear that is sold or worn in California.

8 49. Defendant SKECHERS U.S.A., INC. is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. Defendant SKECHERS U.S.A., INC.
10 manufactures, distributes and/or sells Footwear that is sold or worn in California.

11 50. Defendant THE ROCKPORT COMPANY, LLC is a person in the course of doing
12 business within the meaning of Health & Safety Code §25249.11. Defendant THE ROCKPORT
13 COMPANY, LLC manufactures, distributes and/or sells Footwear that is sold or worn in
14 California.

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

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

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

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

28

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

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

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

20 64. Exposures to hexavalent chromium are of particular concern in light of the highly
21 toxic nature of the chemical. Numerous studies have demonstrated adverse developmental effects
22 resulting from exposure to hexavalent chromium, including increased postimplantation loss,
23 decreased number of live fetuses/litter, decreased fetal weight, internal and skeletal
24 malformations, delayed sexual maturation in offspring, decreased sperm count, and increased
25 percentage of abnormal sperm. *See* Agency for Toxic Substances and Disease Registry
26 (“ASTDR”), U.S. Department of Health & Human Services, *Toxicological Profile for Chromium*
27 (September 2012), pp. 18-19, available at <https://www.atsdr.cdc.gov/toxprofiles/tp7.pdf> (last
28 visited May 19, 2022). In addition, studies using rats and mice have shown that exposure to

1 hexavalent chromium causes a variety of cancers including cancers of the gastrointestinal tract,
2 stomach, tongue and small intestine. *Id.* pp. 21-23.

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

12 66. The leather parts of Defendants' Footwear contain sufficient quantities of
13 hexavalent chromium such that individuals who wear, touch or handle the Footwear are exposed
14 to a significant amount of hexavalent chromium. The primary routes of exposure for the
15 violations are: (1) dermal absorption directly through the skin when consumers wear, touch or
16 handle the Footwear or otherwise have direct skin to leather contact with the leather parts of the
17 Footwear; and (2) ingestion via hand to mouth contact after consumers wear, touch or handle the
18 Footwear. These exposures occur in homes, workplaces and everywhere else throughout
19 California where the Footwear are sold and worn.

20 67. No clear and reasonable warning is provided with Defendants' Footwear regarding
21 the carcinogenic or reproductive hazards of hexavalent chromium.

22 68. Any person acting in the public interest has standing to enforce violations of
23 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
24 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
25 within such time. Health & Safety Code §25249.7(d).

26 69. More than sixty days prior to naming each Defendant in this lawsuit, CEH
27 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General, to
28 the District Attorneys of every county in California, to the City Attorneys of every California city

1 with a population greater than 750,000 and to each of the named Defendants. In compliance with
2 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
3 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
4 during which violations occurred; (4) specific descriptions of the violations, including (a) the
5 routes of exposure to hexavalent chromium from the Footwear, and (b) the specific type of
6 Footwear sold and worn in violation of Proposition 65; and (5) the name of the specific
7 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

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

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

25 72. Defendants know that their Footwear contains and leaches hexavalent chromium.
26 In fact, a significant portion of the leather used in Defendants' Footwear is tested for the presence
27 and leachability of hexavalent chromium. Defendants thus both know and intend that individuals,
28

1 including women and men of child bearing age, will wear, touch or handle the Footwear, thereby
2 exposing them to hexavalent chromium.

3 73. Nevertheless, Defendants continue to expose consumers, including women and
4 men of child bearing age, to hexavalent chromium without prior clear and reasonable warnings
5 regarding the carcinogenic or reproductive hazards of hexavalent chromium.

6 74. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
7 filing this Complaint.

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

13 **FIRST CAUSE OF ACTION**
14 **(Violations of Health & Safety Code §25249.6)**

15 76. CEH realleges and incorporates by reference as if specifically set forth herein each
16 of the preceding paragraphs.

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

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

21 79. Defendants know that average use of their Footwear will expose users to
22 hexavalent chromium. Defendants intend that their Footwear be used in a manner that results in
23 exposures to hexavalent chromium.

24 80. Defendants have failed, and continue to fail, to provide clear and reasonable
25 warnings regarding the carcinogenicity and reproductive toxicity of hexavalent chromium to users
26 of their Footwear.

27 81. By committing the acts alleged above, Defendants have at all times relevant to this
28 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to

1 hexavalent chromium without first giving clear and reasonable warnings to such individuals
2 regarding the carcinogenicity and reproductive toxicity of hexavalent chromium.

3 **PRAYER FOR RELIEF**

4 CEH prays for judgment against Defendants as follows:

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

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

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

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

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

18
19 Dated: May 19, 2022

Respectfully submitted,

20 LEXINGTON LAW GROUP

21 

22
23 Eric S. Somers
24 Attorneys for Plaintiff
25 CENTER FOR ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

2 I, Alexis Pearson, declare:

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

6 On May 19, 2022, I served the following document(s) on all interested parties in this
7 action by placing a true copy thereof in the manner and at the addresses indicated below:

8 **THIRD AMENDED COMPLAINT**

9 **BY MAIL:** I am readily familiar with the firm’s practice for collecting and processing mail
10 with the United States Postal Service (“USPS”). Under that practice, mail would be deposited
11 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.

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

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

16 *Please see attached service list*

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

19 **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility
20 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
below.

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

23 Executed on May 19, 2022 at San Francisco, California.

24 

25 _____
26 Alexis Pearson
27
28

SERVICE LIST
CEH v. Tommy Bahama Group, Inc., et al.
Case No. RG 19-034870

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