



FILED
ALAMEDA COUNTY

JUL 22 2021

CLERK OF THE SUPERIOR COURT

Ann Kops

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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.

GYMSHARK USA, INC.; AMAZON.COM;
BLOOMING BELLIES FITNESS, LLC DBA
THE BLOOM METHOD; LIFE SIMPLIFY, LLC;
and DOES 1 through 200, inclusive,

Defendants.

Case No. **R621107796**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to n-Nitrosodiethylamine ("NDEA"),
7 (collectively, "Nitrosamines"), a chemical known to the State of California to cause cancer. In
8 addition, certain Defendants expose users to n-Nitrosodimethylamine ("NDMA") and NDEA,
9 (collectively, "Nitrosamines"). Nitrosamines are toxic chemicals that are often found in latex,
10 including the latex used in latex resistance bands. This Complaint addresses exposures that have
11 occurred, and continue to occur, through the manufacture, distribution, sale and/or use of
12 Defendants' latex resistance bands (the "Products"). Individuals in California are exposed to
13 Nitrosamines when they use the Products during exercise.

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

20 3. Defendants provide no warnings whatsoever about the carcinogenic hazards
21 associated with Nitrosamines exposure. Defendants' conduct thus violates the warning provision
22 of Proposition 65. Health & Safety Code §25249.6.

23 PARTIES

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
25 corporation dedicated to protecting the public from environmental health hazards and toxic
26 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
27 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and
28 brings this enforcement action in the public interest pursuant to Health & Safety Code

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

7 5. Defendant AMAZON.COM is a person in the course of doing business within the
8 meaning of Health & Safety Code §25249.11. Defendant AMAZON.COM markets, distributes,
9 and/or sells Products containing NDEA and NDMA for sale or use in California. CEH's
10 allegations and claims against Defendant AMAZON.COM in this action are limited to latex
11 resistance bands sold under the "Amazon Basics" brand.

12 6. Defendant BLOOMING BELLIES FITNESS, LLC DBA THE BLOOM
13 METHOD is a person in the course of doing business within the meaning of Health & Safety
14 Code §25249.11. Defendant BLOOMING BELLIES FITNESS, LLC DBA THE BLOOM
15 METHOD markets, distributes, and/or sells Products containing NDEA and NDMA for sale or
16 use in California.

17 7. Defendant GYMSHARK USA, INC. is a person in the course of doing business
18 within the meaning of Health & Safety Code §25249.11. Defendant GYMSHARK USA, INC.
19 markets, distributes, and/or sells Products containing NDEA for sale or use in California.

20 8. Defendant LIFE SIMPLIFY, LLC is a person in the course of doing business
21 within the meaning of Health & Safety Code §25249.11. Defendant LIFE SIMPLIFY, LLC
22 markets, distributes, and/or sells Products containing NDEA for sale or use in California.

23 9. DOES 1 through 200 are each a person in the course of doing business within the
24 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute,
25 and/or sell Products for sale or use in California.

26 10. The true names of DOES 1 through 200 are either unknown to CEH at this time or
27 the applicable time period before which CEH may file a Proposition 65 action has not run. When
28

1 their identities are ascertained or the applicable time period before which CEH may file a
2 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

3 11. The defendants identified in paragraphs 5 through 8 and DOES 1 through 200 are
4 collectively referred to herein as "Defendants."

5 **JURISDICTION AND VENUE**

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

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

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

18 **BACKGROUND FACTS**

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

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

27 No person in the course of doing business shall knowingly and
28 intentionally expose any individual to a chemical known to the state to

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cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . .

17. On October 1, 1987, the State of California officially listed NDEA as a chemical known to cause cancer. 27 California Code of Regulations (“C.C.R.”) §27001(b). On October 1, 1988, one year after it was listed as a chemical known to cause cancer, NDEA became subject to the clear and reasonable warning requirement regarding carcinogens under Proposition 65. Health & Safety Code §25249.10(b).

18. On October 1, 1987, the State of California officially listed NDMA as a chemical known to cause cancer. 27 California Code of Regulations (“C.C.R.”) §27001(b). On October 1, 1988, one year after it was listed as a chemical known to cause cancer, NDMA became subject to the clear and reasonable warning requirement regarding carcinogens under Proposition 65. Health & Safety Code §25249.10(b).

19. Latex resistance bands are popular exercise products used to increase resistance while performing certain exercises. Nitrosamines such as NDEA and NDMA can form during the manufacturing process of latex products, including the Products. The formation of Nitrosamines during latex processing is not necessary to the functionality of the Products, which can be made without them. Yet, Defendants’ products contain sufficient quantities of Nitrosamines that such individuals are exposed to Nitrosamines through the average use of the products. The primary route of exposure for the violations is dermal exposure when consumers come into contact with the Products during exercise. These exposures occur in homes, gymnasiums, and everywhere else throughout California where Defendants’ Products are used.

20. No clear and reasonable warning is provided with Defendants’ Products regarding the carcinogenic hazards of Nitrosamines. The failure to provide warnings regarding the carcinogenicity of Nitrosamines in Defendants’ Products is of particular concern in light of the extreme toxicity of NDEA and NDMA.

21. Any person acting in the public interest has standing to enforce violations of Proposition 65 provided that such person has supplied the requisite public enforcers with a valid

1 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
2 within such time. Health & Safety Code §25249.7(d).

3 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
4 provided a 60-Day “Notice of Violation” of Proposition 65 to the California Attorney General, to
5 the District Attorneys of every county in California, to the City Attorneys of every California city
6 with a population greater than 750,000, and to each of the named Defendants. In compliance with
7 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
8 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
9 during which violations occurred; (4) specific descriptions of the violations, including (a) the
10 routes of exposure to Nitrosamines from Defendants’ latex resistance bands, and (b) the specific
11 type of products sold and used in violation of Proposition 65; and (5) the name of the specific
12 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

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

26 24. None of the public prosecutors with the authority to prosecute violations of
27 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
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1 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH's
2 Notices regarding Nitrosamines in the Products.

3 25. Defendants both know and intend for individuals will come into contact with the
4 Products bands during exercise, thus exposing such individuals to Nitrosamines.

5 26. Defendants continue to expose consumers to Nitrosamines without prior clear and
6 reasonable warnings regarding the carcinogenic hazards of Nitrosamines.

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

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

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

16 29. CEH realleges and incorporates by reference as if specifically set forth herein
17 Paragraphs 1 through 28, inclusive.

18 30. By placing the Products into the stream of commerce, each Defendant is a person
19 in the course of doing business within the meaning of Health & Safety Code §25249.11.

20 31. NDMA is a chemical listed by the State of California as known to cause cancer.

21 32. NDEA is a chemical listed by the State of California as known to cause cancer.

22 33. Each Defendant knows that average use of the Products will expose users of these
23 products to Nitrosamines. Each Defendant intends that the Products be used in a manner that
24 results in exposures to Nitrosamines from these products.

25 34. Each Defendant has failed, and continues to fail, to provide clear and reasonable
26 warnings regarding the carcinogenicity and reproductive toxicity of Nitrosamines to users of its
27 Products.

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1 35. By committing the acts alleged above, each Defendant has at all times relevant to
2 this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to
3 Nitrosamines without first giving clear and reasonable warnings to such individuals regarding the
4 carcinogenicity of Nitrosamines.

5 **PRAYER FOR RELIEF**

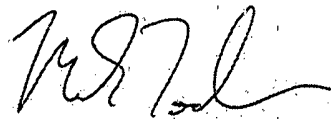
6 CEH prays for judgment against Defendants as follows:

- 7 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
8 permanently enjoin Defendants from offering the Products that will be sold in California without
9 either reducing the Nitrosamines levels in their latex resistance bands such that no Proposition 65
10 warnings are required or providing prior clear and reasonable warnings, as CEH shall specify in
11 further application to the Court;
- 12 2. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
13 penalties against each Defendant in the amount of \$2,500 per day for each violation of
14 Proposition 65 according to proof;
- 15 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants
16 to take action to stop ongoing unwarned exposures to Nitrosamines resulting from the use of latex
17 resistance bands sold by Defendants, as CEH shall specify in further application to the Court;
- 18 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
19 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and
- 20 5. That the Court grant such other and further relief as may be just and proper.

21 Dated: July 20, 2021

Respectfully submitted,

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23 LEXINGTON LAW GROUP

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25 _____
26 Mark N. Todzo
27 Attorneys for Plaintiff
28 CENTER FOR ENVIRONMENTAL HEALTH