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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

02/04/2022
Clerk of the Court

BY: KAREN VALDES
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

EASY SPIRIT LLC; FIVE BELOW, INC.; 1616
HOLDINGS, INC.; B2 FASHIONS INC.;
CENTRAL CAROLINA HOSIERY, INC.;
GERTEXT HOSIERY INC.; INFINITY
CLASSICS INTERNATIONAL; J.C. PENNEY
CORPORATION, INC.; JBL TRADING LLC;
MARQUEE BRANDS LLC; MCCUBBIN
HOSIERY LLC; TRB ACQUISITIONS LLC;
WALMART, INC.; WITH YOU LLC; and DOES
1 through 200, inclusive,

Defendants.

Case No. **CGC-22-598022**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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' continuing failure to warn
6 individuals in California that they are being exposed to Bisphenol A ("BPA"), a chemical known
7 to the State of California to cause cancer. BPA is a toxic chemical derived from oil. BPA is an
8 endocrine disrupting chemical that is known to cause reproductive harm. This Complaint
9 addresses exposures that have occurred, and continue to occur, through the manufacture,
10 distribution, sale and/or use of Defendants' socks made primarily of polyester with spandex (the
11 "Products"). Individuals in California are exposed to BPA when they wear the Products on their
12 feet.

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 the
17 Products containing significant quantities of BPA into the California marketplace, thereby
18 exposing those who wear the Products, including infants, to BPA.

19 3. Defendants provide no warnings whatsoever about the reproductive toxicity
20 associated with BPA exposure. Defendants' conduct thus violates the warning provision of
21 Proposition 65. Health & Safety Code §25249.6.

22 **PARTIES**

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
24 corporation dedicated to protecting the public from environmental health hazards and toxic
25 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
26 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and
27 brings this enforcement action in the public interest pursuant to Health & Safety Code
28 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has

1 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
2 resulted in significant public benefits, including the reformulation of millions of products to
3 remove toxic chemicals and to make them safer. CEH also provides information to Californians
4 about the health risks associated with exposure to hazardous substances, where manufacturers and
5 other responsible parties fail to do so.

6 5. Defendant EASY SPIRIT LLC is a person in the course of doing business within
7 the meaning of Health & Safety Code §25249.11. Defendant EASY SPIRIT LLC markets,
8 distributes, and/or sells Products containing BPA for sale or use in California.

9 6. Defendant FIVE BELOW, INC. is a person in the course of doing business within
10 the meaning of Health & Safety Code §25249.11. Defendant FIVE BELOW, INC. markets,
11 distributes, and/or sells Products containing BPA for sale or use in California. CEH's allegations
12 and claims against Defendant FIVE BELOW, INC. in this action are limited to Products sold
13 under FIVE BELOW, INC.'s private label brands.

14 7. Defendant 1616 HOLDINGS, INC. is a person in the course of doing business
15 within the meaning of Health & Safety Code §25249.11. Defendant 1616 HOLDINGS, INC.
16 markets, distributes, and/or sells Products containing BPA for sale or use in California.

17 8. Defendant B2 FASHIONS INC. is a person in the course of doing business within
18 the meaning of Health & Safety Code §25249.11. Defendant B2 FASHIONS INC. markets,
19 distributes, and/or sells Products containing BPA for sale or use in California.

20 9. Defendant CENTRAL CAROLINA HOSIERY, INC. is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Defendant CENTRAL
22 CAROLINA HOSIERY, INC. markets, distributes, and/or sells Products containing BPA for sale
23 or use in California.

24 10. Defendant GERTEXT HOSIERY INC. is a person in the course of doing business
25 within the meaning of Health & Safety Code §25249.11. Defendant GERTEXT HOSIERY INC.
26 markets, distributes, and/or sells Products containing BPA for sale or use in California.

27 11. Defendant INFINITY CLASSICS INTERNATIONAL is a person in the course of
28 doing business within the meaning of Health & Safety Code §25249.11. Defendant INFINITY

1 CLASSICS INTERNATIONAL markets, distributes, and/or sells Products containing BPA for
2 sale or use in California.

3 12. Defendant J.C. PENNEY CORPORATION, INC. is a person in the course of
4 doing business within the meaning of Health & Safety Code §25249.11. Defendant J.C.
5 PENNEY CORPORATION, INC. markets, distributes, and/or sells Products containing BPA for
6 sale or use in California. CEH's allegations and claims against Defendant J.C. PENNEY
7 CORPORATION, INC. in this action are limited to Products sold under J.C. PENNEY
8 CORPORATION, INC.'s private label brands.

9 13. Defendant JBL TRADING LLC is a person in the course of doing business within
10 the meaning of Health & Safety Code §25249.11. Defendant JBL TRADING LLC markets,
11 distributes, and/or sells Products containing BPA for sale or use in California.

12 14. Defendant MARQUEE BRANDS LLC is a person in the course of doing business
13 within the meaning of Health & Safety Code §25249.11. Defendant MARQUEE BRANDS LLC
14 markets, distributes, and/or sells Products containing BPA for sale or use in California.

15 15. Defendant MCCUBBIN HOSIERY LLC is a person in the course of doing
16 business within the meaning of Health & Safety Code §25249.11. Defendant MCCUBBIN
17 HOSIERY LLC markets, distributes, and/or sells Products containing BPA for sale or use in
18 California.

19 16. Defendant TRB ACQUISITIONS LLC is a person in the course of doing business
20 within the meaning of Health & Safety Code §25249.11. Defendant TRB ACQUISITIONS LLC
21 markets, distributes, and/or sells Products containing BPA for sale or use in California.

22 17. Defendant WALMART, INC. is a person in the course of doing business within
23 the meaning of Health & Safety Code §25249.11. Defendant WALMART, INC. markets,
24 distributes, and/or sells Products containing BPA for sale or use in California. CEH's allegations
25 and claims against Defendant WALMART, INC. in this action are limited to Products sold under
26 WALMART, INC.'s private label brands.

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1 **BACKGROUND FACTS**

2 25. The People of the State of California have declared by initiative under Proposition
3 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
4 other reproductive harm.” Proposition 65, §1(b).

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

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

13 27. On May 11, 2015, the State of California officially listed BPA as a female
14 reproductive toxicant. 27 California Code of Regulations (“C.C.R.”) §27001(b). On May 11,
15 2016, BPA became subject to the clear and reasonable warning requirement regarding
16 reproductive toxicity under Proposition 65. Health & Safety Code §25249.10(b).

17 28. On December 18, 2020, the State of California officially listed BPA as a
18 developmental toxicant. 27 C.C.R. §27001(b).

19 29. The Products are socks made primarily of polyester with spandex. The addition of
20 BPA in the Products is not necessary, as the Products can be made without BPA. Yet,
21 Defendants’ Products contain sufficient quantities of BPA that such individuals are exposed to
22 BPA through the average use of the products. The primary route of exposure for the violations is
23 dermal exposure when consumers wear the Products. These exposures occur in homes,
24 workplaces, and everywhere else throughout California where Defendants’ Products are worn.
25 Because many of the Products are designed for use by infants and young children, many of the
26 exposures at issue in this case are to these vulnerable individuals.

27 30. No clear and reasonable warning is provided with Defendants’ Products regarding
28 the female reproductive toxicity of BPA. The failure to provide warnings regarding the

1 reproductive toxicity of BPA in Defendants’ Products is of particular concern in light of the
2 extreme toxicity of BPA, and the fact that many of these Products are marketed at children,
3 toddlers and babies.

4 31. Any person acting in the public interest has standing to enforce violations of
5 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
6 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
7 within such time. Health & Safety Code §25249.7(d).

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

18 33. CEH also sent a Certificate of Merit for each Notice to the California Attorney
19 General, to the District Attorneys of every county in California, to the City Attorneys of every
20 California city with a population greater than 750,000, and to each of the named Defendants. In
21 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate
22 certified that CEH’s counsel: (1) has consulted with one or more persons with relevant and
23 appropriate experience or expertise who reviewed facts, studies, or other data regarding the
24 exposures to BPA alleged in each Notice; and (2) based on the information obtained through such
25 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement
26 action based on the facts alleged in each Notice. In compliance with Health & Safety Code
27 §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General included
28 factual information – provided on a confidential basis – sufficient to establish the basis for the

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

3 34. 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 BPA in the Products.

7 35. Defendants both know and intend for individuals will come into contact with the
8 Products bands during normal use, thus exposing such individuals to BPA.

9 36. Defendants continue to expose consumers to BPA without prior clear and
10 reasonable warnings regarding the reproductive toxicity of BPA.

11 37. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
12 filing this Complaint.

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

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

20 39. CEH realleges and incorporates by reference as if specifically set forth herein
21 Paragraphs 1 through 38, inclusive.

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

24 41. BPA is a chemical listed by the State of California as a known female reproductive
25 toxicant.

26 42. Each Defendant knows that average use of the Products will expose users of these
27 products to BPA. Each Defendant intends that the Products be used in a manner that results in
28 exposures to BPA from these products.

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Dated: February 4, 2022

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH