

1 LEXINGTON LAW GROUP
2 Mark N. Todzo, State Bar No. 168389
3 Meredyth Merrow, State Bar No. 328337
4 503 Divisadero Street
5 San Francisco, CA 94117
6 Telephone: (415) 913-7800
7 Facsimile: (415) 759-4112
8 mtodzo@lexlawgroup.com
9 mmerrow@lexlawgroup.com

10 Attorneys for Plaintiff
11 CENTER FOR ENVIRONMENTAL HEALTH

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

10/13/2022
Clerk of the Court
BY: JACKIE LAPREVOTTE
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.

DOLLS KILL, INC., SAMS WEST, INC, DSW
SHOE WAREHOUSE, INC., ASHLEY
STEWART, INC., ASHA DESIGN LLC,
VICTORIA'S SECRET & CO., PREGER &
WERTENTEIL, INC., STANCE, INC., and
DOES 1 through 50, inclusive,

Defendants.

Case No.

CGC-22-602383

**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 DOLLS KILL, INC. is a person in the course of doing business within
7 the meaning of Health & Safety Code §25249.11. Defendant DOLLS KILL, INC. markets,
8 distributes, licenses, and/or sells Products containing BPA for sale or use in California.

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

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

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

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

22 10. Defendant VICTORIA'S SECRET & CO. is a person in the course of doing
23 business within the meaning of Health & Safety Code §25249.11. Defendant VICTORIA'S
24 SECRET & CO. markets, distributes, and/or sells Products containing BPA for sale or use in
25 California.

26 11. Defendant PREGER & WERTENTEIL, INC. is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Defendant PREGER &
28

1 WERTENTEIL, INC. markets, distributes, licenses, and/or sells Products containing BPA for sale
2 or use in California.

3 12. Defendant STANCE, INC. is a person in the course of doing business within the
4 meaning of Health & Safety Code §25249.11. Defendant STANCE, INC. markets, distributes,
5 licenses, and/or sells Products containing BPA for sale or use in California.

6 13. DOES 1 through 50 are each a person in the course of doing business within the
7 meaning of Health & Safety Code §25249.11. DOES 1 through 50 manufacture, distribute,
8 license, and/or sell Products for sale or use in California.

9 14. The true names of DOES 1 through 50 are either unknown to CEH at this time or
10 the applicable time period before which CEH may file a Proposition 65 action has not run. When
11 their identities are ascertained or the applicable time period before which CEH may file a
12 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

13 15. The defendants identified in paragraphs 5 through 12 and DOES 1 through 50 are
14 collectively referred to herein as “Defendants.”

15 **JURISDICTION AND VENUE**

16 16. The Court has jurisdiction over this action pursuant to Health & Safety Code
17 §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
18 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
19 other trial courts.

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

26 18. Venue is proper in San Francisco County Superior Court because one or more of
27 the violations arise in the County of San Francisco.

28

1 **BACKGROUND FACTS**

2 19. 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 20. 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 21. 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 22. On December 18, 2020, the State of California officially listed BPA as a
18 developmental toxicant. 27 C.C.R. §27001(b).

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

1 24. Defendants market, distribute, license, and/or sells Products in California. Each of
2 these actions by Defendants operate to propel the Products toward individuals, bringing Products
3 that contain BPA into contact with them.

4 25. No clear and reasonable warning is provided with Defendants' Products regarding
5 the female reproductive toxicity of BPA. The failure to provide warnings regarding the
6 reproductive toxicity of BPA in Defendants' Products is of particular concern in light of the
7 extreme toxicity of BPA, and the fact that many of these Products are marketed to children,
8 toddlers and babies.

9 26. Any person acting in the public interest has standing to enforce violations of
10 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
11 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
12 within such time. Health & Safety Code §25249.7(d).

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

23 28. CEH also sent a Certificate of Merit for each Notice to the California Attorney
24 General, to the District Attorneys of every county in California, to the City Attorneys of every
25 California city with a population greater than 750,000, and to each of the named Defendants. In
26 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate
27 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and
28 appropriate experience or expertise who reviewed facts, studies, or other data regarding the

1 exposures to BPA alleged in each Notice; and (2) based on the information obtained through such
2 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement
3 action based on the facts alleged in each Notice. In compliance with Health & Safety Code
4 §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General included
5 factual information – provided on a confidential basis – sufficient to establish the basis for the
6 Certificate, including the identity of the person(s) consulted by CEH’s counsel and the facts,
7 studies, or other data reviewed by such persons.

8 29. None of the public prosecutors with the authority to prosecute violations of
9 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
10 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s
11 Notices regarding BPA in the Products.

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

14 31. Defendants continue to expose consumers to BPA without prior clear and
15 reasonable warnings regarding the reproductive toxicity of BPA.

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

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

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

25 34. CEH realleges and incorporates by reference as if specifically set forth herein
26 Paragraphs 1 through 33, inclusive.

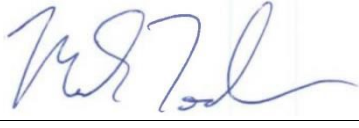
27 35. By placing the Products into the stream of commerce, each Defendant is a person
28 in the course of doing business within the meaning of Health & Safety Code §25249.11.

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Dated: October 13, 2022

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH