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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

10/13/2023
Clerk of the Court
BY: KALENE APOLONIO
Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**

10 CENTER FOR ENVIRONMENTAL HEALTH,
11 a non-profit corporation,

12 Plaintiff,

13 v.

14 ATHLETA LLC, 99 CENTS ONLY STORES
15 LLC, ADIDAS AMERICA, INC., ALO, LLC,
16 AMAZON.COM SERVICES, INC.,
17 AMAZON.COM, INC., ASICS AMERICA
18 CORPORATION, AUTHENTIC BRANDS
19 GROUP LLC, COLOR IMAGE APPAREL, INC.,
20 COLUMBIA SPORTSWEAR COMPANY,
21 DECKERS OUTDOOR CORPORATION,
22 DOLLAR TREE STORES, INC., EQUINOX
23 HOLDINGS, INC., FAMILY DOLLAR, LLC,
24 FILA U.S.A., INC., HANESBRANDS INC., I
25 AM BEYOND LLC, KOHL'S CORPORATION,
26 KOHL'S INC., LADY OF LEISURE HOLDINGS
27 LIMITED, LEVI STRAUSS & CO., MIZUNO
28 USA, INC., NEW BALANCE ATHLETICS,
INC., NIKE USA, INC., OUTDOOR VOICES,
INC., PATAGONIA, INC., PENNEY OPCO
LLC, PRANA LIVING, LLC, REEBOK
INTERNATIONAL LTD., LLC, SKECHERS
USA, INC., SOULCYCLE LLC, SWEATY
BETTY LIMITED, TARGET CORPORATION,
THE GAP, INC., THE LEVY GROUP, INC.,
THE NORTH FACE APPAREL CORP., URBAN
OUTFITTERS, INC., V.F. OUTDOOR, LLC,
VICTORIA'S SECRET & CO., WALMART INC,
WOLVERINE WORLD WIDE, INC., and DOES
1 through 200, inclusive.

Defendants.

Case No. CGC-23-604604

**FIRST AMENDED 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, man-made chemical derived from oil.
8 BPA is also an endocrine disrupting chemical that is known to cause reproductive harm. This
9 Complaint addresses exposures by Defendants that have occurred, and continue to occur, through
10 the manufacture, distribution, sale and/or use of the following types of clothing made primarily of
11 polyester with spandex. These products are collectively referred to herein as the “Clothing
12 Products”: (1) sports bras made primarily of polyester with spandex (“Sports Bras”); (2) athletic
13 shirts made primarily of polyester with spandex worn by females (“Athletic Shirts”); (3) athletic
14 shorts made primarily of polyester that also contain some spandex (“Athletic Shorts”); and (4)
15 leggings made primarily of polyester that also contain some spandex (“Leggings”). Individuals in
16 California are exposed to BPA when they wear the Clothing Products on their bodies.

17 2. Under California’s Proposition 65, Health & Safety Code §25249.5, *et seq.*, it is
18 unlawful for businesses to knowingly and intentionally expose individuals in California to
19 chemicals known to the State to cause cancer, birth defects, or other reproductive harm without
20 first providing clear and reasonable warnings to exposed individuals. Defendants introduce the
21 Clothing Products containing significant quantities of BPA into the California marketplace,
22 thereby exposing those who wear the Clothing Products, including pregnant women, to BPA.

23 3. Defendants provide no warnings whatsoever about the reproductive toxicity
24 associated with the BPA exposures resulting from use of their Clothing Products. Defendants’
25 conduct thus violates the exposure provision of Proposition 65. Health & Safety Code §25249.6.

26 **PARTIES**

27 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a non-profit
28 corporation dedicated to protecting the public from environmental health hazards and toxic

1 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
2 California. CEH is a “person” within the meaning of Health & Safety Code §25249.11(a) and
3 brings this enforcement action in the public interest pursuant to Health & Safety Code
4 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
5 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
6 resulted in significant public benefits, including the reformulation of millions of products to
7 remove toxic chemicals and to make them safer. CEH also provides information to Californians
8 about the health risks associated with exposure to hazardous substances, where manufacturers and
9 other responsible parties fail to do so.

10 5. Defendant ATHLETA LLC is a person in the course of doing business within the
11 meaning of Health & Safety Code §25249.11. Defendant ATHLETA LLC markets, distributes,
12 licenses, and/or sells Sports Bras, Athletic Shirts, and Leggings containing BPA for sale or use in
13 California. The Clothing Products at issue in this complaint for defendant ATHELETA LLC are
14 limited to Sports Bras, Athletic Shirts and Leggings.

15 6. Defendant 99 CENTS ONLY STORES LLC is a person in the course of doing
16 business within the meaning of Health & Safety Code §25249.11. Defendant 99 CENTS ONLY
17 STORES LLC markets, distributes, licenses, and/or sells Athletic Shirts and Leggings containing
18 BPA for sale or use in California. The Clothing Products at issue in this complaint for defendant
19 99 CENTS ONLY STORES LLC are limited to Athletic Shirts and Leggings.

20 7. Defendant ADIDAS AMERICA, INC. is a person in the course of doing business
21 within the meaning of Health & Safety Code §25249.11. Defendant ADIDAS AMERICA, INC.
22 markets, distributes, licenses, and/or sells Athletic Shorts containing BPA for sale or use in
23 California. The Clothing Products at issue in this complaint for ADIDAS AMERICA, INC. are
24 limited to Athletic Shorts.

25 8. Defendant ALO, LLC is a person in the course of doing business within the
26 meaning of Health & Safety Code §25249.11. Defendant ALO, LLC markets, distributes,
27 licenses, and/or sells Leggings containing BPA for sale or use in California. The Clothing
28 Products at issue in this complaint for defendant ALO, LLC are limited to Leggings.

1 9. Defendant AMAZON.COM SERVICES, INC. is a person in the course of doing
2 business within the meaning of Health & Safety Code §25249.11. Defendant AMAZON.COM
3 SERVICES, INC. markets, distributes, licenses, and/or sells Sports Bras and Leggings containing
4 BPA for sale or use in California. The Clothing Products at issue in this complaint for defendant
5 AMAZON.COM SERVICES, INC. are limited to Sports Bras and Leggings.

6 10. Defendant AMAZON.COM, INC. is a person in the course of doing business
7 within the meaning of Health & Safety Code §25249.11. Defendant AMAZON.COM, INC.
8 markets, distributes, licenses, and/or sells Sports Bras and Leggings containing BPA for sale or
9 use in California. The Clothing Products at issue in this complaint for defendant
10 AMAZON.COM, INC. are limited to Sports Bras and Leggings.

11 11. Defendant ASICS AMERICA CORPORATION is a person in the course of doing
12 business within the meaning of Health & Safety Code §25249.11. Defendant ASICS AMERICA
13 CORPORATION markets, distributes, licenses, and/or sells Sports Bras and Athletic Shorts
14 containing BPA for sale or use in California. The Clothing Products at issue in this complaint for
15 defendant ASICS AMERICA CORPORATION are limited to Sports Bras and Athletic Shorts.

16 12. Defendant AUTHENTIC BRANDS GROUP LLC is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. Defendant
18 AUTHENTIC BRANDS GROUP LLC markets, distributes, licenses, and/or sells Athletic Shirts
19 containing BPA for sale or use in California. The Clothing Products at issue in this complaint for
20 defendant AUTHENTIC BRANDS GROUP LLC are limited to Athletic Shirts.

21 13. Defendant COLOR IMAGE APPAREL, INC. is a person in the course of doing
22 business within the meaning of Health & Safety Code §25249.11. Defendant COLOR IMAGE
23 APPAREL, INC. markets, distributes, licenses, and/or sells Leggings containing BPA for sale or
24 use in California. The Clothing Products at issue in this complaint for defendant COLOR
25 IMAGE APPAREL, INC. are limited to Leggings.

26 14. Defendant COLUMBIA SPORTSWEAR COMPANY is a person in the course of
27 doing business within the meaning of Health & Safety Code §25249.11. Defendant COLUMBIA
28 SPORTSWEAR COMPANY markets, distributes, licenses, and/or sells Athletic Shorts

1 containing BPA for sale or use in California. The Clothing Products at issue in this complaint for
2 defendant COLUMBIA SPORTSWEAR COMPANY are limited to Athletic Shorts.

3 15. Defendant DECKERS OUTDOOR CORPORATION is a person in the course of
4 doing business within the meaning of Health & Safety Code §25249.11. Defendant DECKERS
5 OUTDOOR CORPORATION markets, distributes, licenses, and/or sells Athletic Shirts and
6 Athletic Shorts containing BPA for sale or use in California. The Clothing Products at issue in
7 this complaint for defendant DECKERS OUTDOOR CORPORATION are limited to Athletic
8 Shirts and Athletic Shorts.

9 16. Defendant DOLLAR TREE STORES, INC. is a person in the course of doing
10 business within the meaning of Health & Safety Code §25249.11. Defendant DOLLAR TREE
11 STORES, INC. markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale or
12 use in California. The Clothing Products at issue in this complaint for defendant DOLLAR
13 TREE STORES, INC. are limited to Sports Bras.

14 17. Defendant EQUINOX HOLDINGS, INC. is a person in the course of doing
15 business within the meaning of Health & Safety Code §25249.11. Defendant EQUINOX
16 HOLDINGS, INC. markets, distributes, licenses, and/or sells Athletic Shirts containing BPA for
17 sale or use in California. The Clothing Products at issue in this complaint for defendant
18 EQUINOX HOLDINGS, INC. are limited to Athletic Shirts.

19 18. Defendant FAMILY DOLLAR, LLC is a person in the course of doing business
20 within the meaning of Health & Safety Code §25249.11. Defendant FAMILY DOLLAR, LLC
21 markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale or use in
22 California. The Clothing Products at issue in this complaint for defendant FAMILY DOLLAR,
23 LLC are limited to Sports Bras.

24 19. Defendant FILA U.S.A., INC. is a person in the course of doing business within
25 the meaning of Health & Safety Code §25249.11. Defendant FILA U.S.A., INC. markets,
26 distributes, licenses, and/or sells Sports Bras and Athletic Shirts containing BPA for sale or use in
27 California. The Clothing Products at issue in this complaint for defendant FILA U.S.A., INC. are
28 limited to Sports Bras and Athletic Shirts.

1 20. Defendant HANESBRANDS INC. is a person in the course of doing business
2 within the meaning of Health & Safety Code §25249.11. Defendant HANESBRANDS INC.
3 markets, distributes, licenses, and/or sells Athletic Shorts and Leggings containing BPA for sale
4 or use in California. The Clothing Products at issue in this complaint for defendant
5 HANESBRANDS INC. are limited to Athletic Shorts and Leggings.

6 21. Defendant I AM BEYOND LLC is a person in the course of doing business within
7 the meaning of Health & Safety Code §25249.11. Defendant I AM BEYOND LLC markets,
8 distributes, licenses, and/or sells Athletic Shirts containing BPA for sale or use in California. The
9 Clothing Products at issue in this complaint for defendant I AM BEYOND LLC are limited to
10 Athletic Shirts.

11 22. Defendant KOHL'S CORPORATION is a person in the course of doing business
12 within the meaning of Health & Safety Code §25249.11. Defendant KOHL'S CORPORATION
13 markets, distributes, licenses, and/or sells Leggings containing BPA for sale or use in California.
14 The Clothing Products at issue in this complaint for defendant KOHL'S CORPORATION are
15 limited to Leggings.

16 23. Defendant KOHL'S INC. is a person in the course of doing business within the
17 meaning of Health & Safety Code §25249.11. Defendant KOHL'S INC. markets, distributes,
18 licenses, and/or sells Leggings containing BPA for sale or use in California. The Clothing
19 Products at issue in this complaint for defendant KOHL'S INC. are limited to Leggings.

20 24. Defendant LADY OF LEISURE HOLDINGS LIMITED is a person in the course
21 of doing business within the meaning of Health & Safety Code §25249.11. Defendant LADY OF
22 LEISURE HOLDINGS LIMITED markets, distributes, licenses, and/or sells Sports Bras
23 containing BPA for sale or use in California. The Clothing Products at issue in this complaint for
24 defendant LADY OF LEISURE HOLDINGS LIMITED are limited to Sports Bras.

25 25. Defendant LEVI STRAUSS & CO. is a person in the course of doing business
26 within the meaning of Health & Safety Code §25249.11. Defendant LEVI STRAUSS & CO.
27 markets, distributes, licenses, and/or sells Athletic Shirts containing BPA for sale or use in
28

1 California. The Clothing Products at issue in this complaint for defendant LEVI STRAUSS &
2 CO. are limited to Athletic Shirts.

3 26. Defendant MIZUNO USA, INC. is a person in the course of doing business within
4 the meaning of Health & Safety Code §25249.11. Defendant MIZUNO USA, INC. markets,
5 distributes, licenses, and/or sells Athletic Shirts containing BPA for sale or use in California. The
6 Clothing Products at issue in this complaint for defendant MIZUNO USA, INC. are limited to
7 Athletic Shirts.

8 27. Defendant NEW BALANCE ATHLETICS, INC. is a person in the course of
9 doing business within the meaning of Health & Safety Code §25249.11. Defendant NEW
10 BALANCE ATHLETICS, INC. markets, distributes, licenses, and/or sells Athletic Shirts and
11 Athletic Shorts containing BPA for sale or use in California. The Clothing Products at issue in
12 this complaint for defendant NEW BALANCE ATHLETICS, INC. are limited to Athletic Shirts
13 and Athletic Shorts.

14 28. Defendant NIKE USA, INC. is a person in the course of doing business within the
15 meaning of Health & Safety Code §25249.11. Defendant NIKE USA, INC. markets, distributes,
16 licenses, and/or sells Sports Bras, Athletic Shorts, and Leggings containing BPA for sale or use in
17 California. The Clothing Products at issue in this complaint for defendant NIKE USA, INC. are
18 limited to Sports Bras, Athletic Shorts and Leggings.

19 29. Defendant OUTDOOR VOICES, INC. is a person in the course of doing business
20 within the meaning of Health & Safety Code §25249.11. Defendant OUTDOOR VOICES, INC.
21 markets, distributes, licenses, and/or sells Athletic Shirts containing BPA for sale or use in
22 California. The Clothing Products at issue in this complaint for defendant OUTDOOR VOICES,
23 INC. are limited to Athletic Shirts.

24 30. Defendant PATAGONIA, INC. is a person in the course of doing business within
25 the meaning of Health & Safety Code §25249.11. Defendant PATAGONIA, INC. markets,
26 distributes, licenses, and/or sells Sports Bras, Athletic Shirts, and Leggings containing BPA for
27 sale or use in California. The Clothing Products at issue in this complaint for defendant
28 PATAGONIA, INC. are limited to Sports Bras, Athletic Shirts and Leggings.

1 31. Defendant PENNEY OPCO LLC is a person in the course of doing business
2 within the meaning of Health & Safety Code §25249.11. Defendant PENNEY OPCO LLC
3 markets, distributes, licenses, and/or sells Athletic Shirts and Athletic Shorts containing BPA for
4 sale or use in California. The Clothing Products at issue in this complaint for defendant PENNEY
5 OPCO LLC are limited to Athletic Shirts and Athletic Shorts.

6 32. Defendant PRANA LIVING, LLC is a person in the course of doing business
7 within the meaning of Health & Safety Code §25249.11. Defendant PRANA LIVING, LLC
8 markets, distributes, licenses, and/or sells Athletic Shorts containing BPA for sale or use in
9 California. The Clothing Products at issue in this complaint for defendant PRANA LIVING, LLC
10 are limited to Athletic Shorts.

11 33. Defendant REEBOK INTERNATIONAL LTD., LLC is a person in the course of
12 doing business within the meaning of Health & Safety Code §25249.11. Defendant REEBOK
13 INTERNATIONAL LTD., LLC markets, distributes, licenses, and/or sells Athletic Shirts
14 containing BPA for sale or use in California. The Clothing Products at issue in this complaint for
15 defendant REEBOK INTERNATIONAL LTD., LLC are limited to Athletic Shirts.

16 34. Defendant SKECHERS USA, INC. is a person in the course of doing business
17 within the meaning of Health & Safety Code §25249.11. Defendant SKECHERS USA, INC.
18 markets, distributes, licenses, and/or sells Sports Bras and Athletic Shirts containing BPA for sale
19 or use in California. The Clothing Products at issue in this complaint for defendant SKECHERS
20 USA, INC. are limited to Sports Bras and Athletic Shirts.

21 35. Defendant SOULCYCLE LLC is a person in the course of doing business within
22 the meaning of Health & Safety Code §25249.11. Defendant SOULCYCLE LLC markets,
23 distributes, licenses, and/or sells Athletic Shirts containing BPA for sale or use in California. The
24 Clothing Products at issue in this complaint for defendant SOULCYCLE LLC are limited to
25 Athletic Shirts.

26 36. Defendant SWEATY BETTY LIMITED is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Defendant SWEATY BETTY
28 LIMITED markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale or use

1 in California. The Clothing Products at issue in this complaint for defendant SWEATY BETTY
2 LIMITED are limited to Sports Bras.

3 37. Defendant TARGET CORPORATION is a person in the course of doing business
4 within the meaning of Health & Safety Code §25249.11. Defendant TARGET CORPORATION
5 markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale or use in
6 California. CEH's allegations and claims against Defendant TARGET CORPORATION in this
7 action are limited to Sports Bras sold under TARGET CORPORATION's private label brands.
8 The Clothing Products at issue in this complaint for defendant TARGET CORPORATION are
9 limited to Sports Bras.

10 38. Defendant THE GAP, INC. is a person in the course of doing business within the
11 meaning of Health & Safety Code §25249.11. Defendant THE GAP, INC. markets, distributes,
12 licenses, and/or sells Sports Bras, Athletic Shirts, and Leggings containing BPA for sale or use in
13 California. The Clothing Products at issue in this complaint for defendant THE GAP, INC. are
14 limited to Sports Bras, Athletic Shirts and Leggings.

15 39. Defendant THE LEVY GROUP, INC. is a person in the course of doing business
16 within the meaning of Health & Safety Code §25249.11. Defendant THE LEVY GROUP, INC.
17 markets, distributes, licenses, and/or sells Athletic Shirts containing BPA for sale or use in
18 California. The Clothing Products at issue in this complaint for defendant THE LEVY GROUP,
19 INC. are limited to Athletic Shirts.

20 40. Defendant THE NORTH FACE APPAREL CORP. is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. Defendant THE NORTH
22 FACE APPAREL CORP. markets, distributes, licenses, and/or sells Sports Bras and Athletic
23 Shirts containing BPA for sale or use in California. The Clothing Products at issue in this
24 complaint for defendant THE NORTH FACE APPAREL CORP. are limited to Sports Bras and
25 Athletic Shirts.

26 41. Defendant URBAN OUTFITTERS, INC. is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Defendant URBAN
28 OUTFITTERS, INC. markets, distributes, licenses, and/or sells Athletic Shirts containing BPA

1 for sale or use in California. The Clothing Products at issue in this complaint for defendant
2 URBAN OUTFITTERS, INC. are limited to Athletic Shirts.

3 42. Defendant V.F. OUTDOOR, LLC is a person in the course of doing business
4 within the meaning of Health & Safety Code §25249.11. Defendant V.F. OUTDOOR, LLC
5 markets, distributes, licenses, and/or sells Sports Bras and Athletic Shirts containing BPA for sale
6 or use in California. The Clothing Products at issue in this complaint for defendant V.F.
7 OUTDOOR, LLC are limited to Sports Bras and Athletic Shirts.

8 43. Defendant VICTORIA'S SECRET & CO. is a person in the course of doing
9 business within the meaning of Health & Safety Code §25249.11. Defendant VICTORIA'S
10 SECRET & CO. markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale
11 or use in California. The Clothing Products at issue in this complaint for defendant VICTORIA'S
12 SECRET & CO. are limited to Sports Bras.

13 44. Defendant WALMART INC. is a person in the course of doing business within the
14 meaning of Health & Safety Code §25249.11. Defendant WALMART INC. markets, distributes,
15 licenses, and/or sells Sports Bras and Athletic Shorts containing BPA for sale or use in California.
16 The Clothing Products at issue in this complaint for defendant WALMART INC. are limited to
17 Sports Bras and Athletic Shorts.

18 45. Defendant WOLVERINE WORLD WIDE, INC. is a person in the course of doing
19 business within the meaning of Health & Safety Code §25249.11. Defendant WOLVERINE
20 WORLD WIDE, INC. markets, distributes, licenses, and/or sells Sports Bras containing BPA for
21 sale or use in California. The Clothing Products at issue in this complaint for defendant
22 WOLVERINE WORLD WIDE, INC. are limited to Sports Bras.

23 46. 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 licenses, and/or sell the Clothing Products for sale or use in California.

26 47. 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 48. The defendants identified in paragraphs 5 through 45 and DOES 1 through 200 are
4 collectively referred to herein as “Defendants.”

5 **JURISDICTION AND VENUE**

6 49. 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 50. 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 Clothing Products
13 in 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 51. Venue is proper in San Francisco County Superior Court because one or more of
17 the violations arise in the County of San Francisco.

18 **BACKGROUND FACTS**

19 52. 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 53. 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 without a “clear and reasonable warning” unless the business responsible for the exposure
25 can prove that it fits within a statutory exemption. Health & Safety Code §25249.6 states, in
26 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

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

3 54. On May 11, 2015, the State of California officially listed BPA as a female
4 reproductive toxicant. 27 California Code of Regulations (“C.C.R.”) §27001(b). On May 11,
5 2016, BPA became subject to the clear and reasonable warning requirement regarding
6 reproductive toxicity under Proposition 65. Health & Safety Code §25249.10(b).

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

9 56. The Clothing Products contain BPA. The addition of BPA in Clothing Products is
10 not necessary, as Clothing Products can be made without BPA. Yet, Defendants’ Clothing
11 Products contain sufficient quantities of BPA that individuals are exposed to BPA through the
12 average use of the products. The primary route of exposure for the violations is dermal exposure
13 when consumers wear the Clothing Products. Additional exposures to BPA from the Clothing
14 Products result when consumers ingest BPA due to hand to mouth contact after touching the
15 Clothing Products. These exposures occur in homes, workplaces, and everywhere else
16 throughout California where Defendants’ Clothing Products are worn. Because Clothing Products
17 are designed for use by women, including pregnant women, many of the exposures at issue in this
18 case are to vulnerable individuals.

19 57. Defendants’ market, distribute, license, and/or sell Clothing Products in California.
20 Each of these actions by the Defendants operate to propel the Clothing Products toward
21 individuals, bringing Clothing Products that contain BPA into contact with them.

22 58. No clear and reasonable warning is provided with the Defendants’ Clothing
23 Products regarding the female reproductive toxicity of BPA. The failure to provide warnings
24 regarding the reproductive toxicity of BPA in the Defendants’ Clothing Products is of particular
25 concern in light of the extreme toxicity of BPA.

26 59. Any person acting in the public interest has standing to enforce violations of
27 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
28

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 60. 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) a
10 description of the specific type of Clothing Products sold and used in violation of Proposition 65;
11 (b) the routes of exposure to BPA from Defendants’ Clothing Products; and (5) the name of the
12 specific Proposition 65-listed chemical that is the subject of the violations described in each
13 Notice.

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

27 62. None of the public prosecutors with the authority to prosecute violations of
28 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants

1 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s
2 Notices regarding BPA in the Clothing Products.

3 63. Defendants both know and intend for individuals will come into contact with the
4 Clothing Products during normal use, thus exposing such individuals to BPA.

5 64. Defendants continue to expose consumers to BPA without prior clear and
6 reasonable warnings regarding the reproductive toxicity of BPA.

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

9 66. 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.

14 **FIRST CAUSE OF ACTION**
15 **(Violations of Health & Safety Code §25249.6**
16 **Regarding Clothing Products Sold By Defendants)**

17 67. CEH realleges and incorporates by reference as if specifically set forth herein
18 Paragraphs 1 through 66, inclusive.

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

21 69. BPA is a chemical listed by the State of California as a known female reproductive
22 toxicant.

23 70. Each Defendant knows that average use of the Clothing Products will expose users
24 of these products to BPA. Each Defendant intends that the Clothing Products be used in a manner
25 that results in exposures to BPA from these products.

26 71. Each Defendant has failed, and continues to fail, to provide clear and reasonable
27 warnings regarding the carcinogenicity and reproductive toxicity of BPA to users of its Clothing
28 Products.

1 72. 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 BPA without first giving clear and reasonable warnings to such individuals regarding the
4 reproductive toxicity of BPA.

5 **PRAYER FOR RELIEF**

6 CEH prays for judgment against Defendants as follows:

7 73. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
8 permanently enjoin the Defendants from offering Clothing Products that will be sold in California
9 without either reducing the BPA levels in their Clothing Products made primarily of polyester
10 with spandex such that no Proposition 65 warnings are required or providing prior clear and
11 reasonable warnings, as CEH shall specify in further application to the Court;

12 74. 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 75. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants
16 to take action to stop ongoing unwarned exposures to BPA resulting from wearing of the Clothing
17 Products sold by Defendants, as CEH shall specify in further application to the Court;

18 76. 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 77. That the Court grant such other and further relief as may be just and proper.

21
22
23 Dated: October 13, 2023

Respectfully submitted,

24 LEXINGTON LAW GROUP

25 

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