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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

02/09/2023
Clerk of the Court

BY: JEFFREY FLORES
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.

ATHLETA LLC; THE NORTH FACE APPAREL
CORP.; V.F. CORPORATION; V.F. OUTDOOR,
LLC; THE GAP, INC.; VICTORIA'S SECRET &
CO.; ASICS AMERICA CORPORATION; NIKE,
INC.; NIKE USA, INC.; TARGET
CORPORATION; TARGET BRANDS, INC.;
FILA U.S.A., INC.; NEW BALANCE
ATHLETICS, INC.; MIZUNO USA, INC.;
REEBOK INTERNATIONAL LTD., LLC;
AUTHENTIC BRANDS GROUP LLC; and
DOES 1 through 200, inclusive,

Defendants.

Case No.

CGC-23-604604

**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’ sports bras made primarily of polyester with spandex
11 (“Sports Bras”) and/or Defendants’ athletic shirts made primarily of polyester with spandex worn
12 by females (“Athletic Shirts”). Individuals in California are exposed to BPA when they wear the
13 Sports Bras and/or Athletic Shirts on their bodies.

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 Sports Bras and/or Athletic Shirts containing significant quantities of BPA into the California
19 marketplace, thereby exposing those who wear the Sports Bras and/or Athletic Shirts, including
20 pregnant women, to BPA.

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

24 **PARTIES**

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

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

8 5. Defendant ATHLETA LLC is a person in the course of doing business within the
9 meaning of Health & Safety Code §25249.11. Defendant ATHLETA LLC markets, distributes,
10 licenses, and/or sells Sports Bras and Athletic Shirts containing BPA for sale or use in California.

11 6. Defendant THE NORTH FACE APPAREL CORP. is a person in the course of
12 doing business within the meaning of Health & Safety Code §25249.11. Defendant THE
13 NORTH FACE APPAREL CORP. markets, distributes, licenses, and/or sells Sports Bras and
14 Athletic Shirts containing BPA for sale or use in California.

15 7. Defendant V.F. CORPORATION is a person in the course of doing business
16 within the meaning of Health & Safety Code §25249.11. Defendant V.F. CORPORATION
17 markets, distributes, licenses, and/or sells Sports Bras and Athletic Shirts containing BPA for sale
18 or use in California.

19 8. Defendant V.F. OUTDOOR, LLC is a person in the course of doing business
20 within the meaning of Health & Safety Code §25249.11. Defendant V.F. OUTDOOR, LLC
21 markets, distributes, licenses, and/or sells Sports Bras and Athletic Shirts containing BPA for sale
22 or use in California.

23 9. Defendant THE GAP, INC. is a person in the course of doing business within the
24 meaning of Health & Safety Code §25249.11. Defendant THE GAP, INC. markets, distributes,
25 licenses, and/or sells Sports Bras and Athletic Shirts containing BPA for sale or use in California.

26 10. Defendant VICTORIA'S SECRET & CO. is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. Defendant VICTORIA'S
28 SECRET & CO. markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale

1 or use in California. CEH's allegations and claims against Defendant VICTORIA'S SECRET &
2 CO. in this action are limited to Sports Bras sold under VICTORIA'S SECRET & CO.'s private
3 label brands.

4 11. Defendant ASICS AMERICA CORPORATION is a person in the course of doing
5 business within the meaning of Health & Safety Code §25249.11. Defendant ASICS AMERICA
6 CORPORATION markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale
7 or use in California.

8 12. Defendant NIKE, INC. is a person in the course of doing business within the
9 meaning of Health & Safety Code §25249.11. Defendant NIKE, INC. markets, distributes,
10 licenses, and/or sells Sports Bras containing BPA for sale or use in California.

11 13. Defendant NIKE USA, INC. is a person in the course of doing business within the
12 meaning of Health & Safety Code §25249.11. Defendant NIKE USA, INC. markets, distributes,
13 licenses, and/or sells Sports Bras containing BPA for sale or use in California.

14 14. Defendant TARGET CORPORATION is a person in the course of doing business
15 within the meaning of Health & Safety Code §25249.11. Defendant TARGET CORPORATION
16 markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale or use in
17 California. CEH's allegations and claims against Defendant TARGET CORPORATION in this
18 action are limited to Sports Bras sold under TARGET CORPORATION's private label brands.

19 15. Defendant TARGET BRANDS, INC. is a person in the course of doing business
20 within the meaning of Health & Safety Code §25249.11. Defendant TARGET BRANDS, INC.
21 markets, distributes, licenses, and/or sells Sports Bras containing BPA for sale or use in
22 California. CEH's allegations and claims against Defendant TARGET BRANDS, INC. in this
23 action are limited to Sports Bras sold under TARGET BRAND INC.'s private label brands.

24 16. 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 containing BPA for sale or use in California.

27 17. Defendant NEW BALANCE ATHLETICS, INC. is a person in the course of
28 doing business within the meaning of Health & Safety Code §25249.11. Defendant NEW

1 BALANCE ATHLETICS, INC. markets, distributes, licenses, and/or sells Athletic Shirts
2 containing BPA for sale or use in California.

3 18. 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.

6 19. Defendant REEBOK INTERNATIONAL LTD., LLC is a person in the course of
7 doing business within the meaning of Health & Safety Code §25249.11. Defendant REEBOK
8 INTERNATIONAL LTD., LLC markets, distributes, licenses, and/or sells Athletic Shirts
9 containing BPA for sale or use in California.

10 20. Defendant AUTHENTIC BRANDS GROUP LLC is a person in the course of
11 doing business within the meaning of Health & Safety Code §25249.11. Defendant
12 AUTHENTIC BRANDS GROUP LLC markets, distributes, licenses, and/or sells Athletic Shirts
13 containing BPA for sale or use in California.

14 21. DOES 1 through 200 are each a person in the course of doing business within the
15 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute,
16 licenses, and/or sell Sports Bras and/or Athletic Shirts for sale or use in California.

17 22. The true names of DOES 1 through 200 are either unknown to CEH at this time or
18 the applicable time period before which CEH may file a Proposition 65 action has not run. When
19 their identities are ascertained or the applicable time period before which CEH may file a
20 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

21 23. The defendants identified in paragraphs 5 through 20 and DOES 1 through 200 are
22 collectively referred to herein as “Defendants.”

23 **JURISDICTION AND VENUE**

24 24. The Court has jurisdiction over this action pursuant to Health & Safety Code
25 §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
26 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
27 other trial courts.

28

1 Defendants' Sports Bras contain sufficient quantities of BPA that individuals are exposed to BPA
2 through the average use of the products. The primary route of exposure for the violations is
3 dermal exposure when consumers wear the Sports Bras. These exposures occur in homes,
4 workplaces, and everywhere else throughout California where Defendants' Sports Bras are worn.
5 Because Sports Bras are designed for use by women, including pregnant women, many of the
6 exposures at issue in this case are to vulnerable individuals.

7 32. Defendants The North Face Apparel Corp, V.F. Corporation, V.F. Outdoor, LLC,
8 Athleta LLC, The Gap, Inc., Victoria's Secret & Co., Asics America Corporation, Target
9 Corporation, Target Brands, Inc., Nike, Inc., Nike USA, Inc., and FILA U.S.A., Inc. (collectively,
10 the "Sports Bras Defendants") market, distribute, license, and/or sell Sports Bras in California.
11 Each of these actions by the Sports Bras Defendants operate to propel the Sports Bras toward
12 individuals, bringing Sports Bras that contain BPA into contact with them.

13 33. No clear and reasonable warning is provided with the Sports Bras Defendants'
14 Sports Bras regarding the female reproductive toxicity of BPA. The failure to provide warnings
15 regarding the reproductive toxicity of BPA in the Sports Bras Defendants' Sports Bras is of
16 particular concern in light of the extreme toxicity of BPA.

17 34. Athletic Shirts are athletic shirts made primarily of polyester with spandex. The
18 addition of BPA in Athletic Shirts is not necessary, as Athletic Shirts can be made without BPA.
19 Yet, Defendants' Athletic Shirts contain sufficient quantities of BPA that individuals are exposed
20 to BPA through the average use of the products. The primary route of exposure for the violations
21 is dermal exposure when consumers wear the Athletic Shirts. These exposures occur in homes,
22 workplaces, and everywhere else throughout California where Defendants' Athletic Shirts are
23 worn. Because Athletic Shirts are designed for use by women, including pregnant women, many
24 of the exposures at issue in this case are to vulnerable individuals.

25 35. Defendants The North Face Apparel Corp, V.F. Corporation, V.F. Outdoor, LLC,
26 Mizuno USA, Inc., Athleta LLC, The Gap, Inc., New Balance Athletics, Inc., Reebok
27 International Ltd., LLC, and Authentic Brands Group LLC (collectively, the "Athletic Shirts
28 Defendants") market, distribute, license, and/or sell Athletic Shirts in California. Each of these

1 actions by the Athletic Shirts Defendants operate to propel the Athletic Shirts toward individuals,
2 bringing Athletic Shirts that contain BPA into contact with them.

3 36. No clear and reasonable warning is provided with the Athletic Shirts Defendants'
4 Athletic Shirts regarding the female reproductive toxicity of BPA. The failure to provide
5 warnings regarding the reproductive toxicity of BPA in the Athletic Shirts Defendants' Athletic
6 Shirts is of particular concern in light of the extreme toxicity of BPA.

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

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

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

1 action based on the facts alleged in each Notice. In compliance with Health & Safety Code
2 §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General included
3 factual information – provided on a confidential basis – sufficient to establish the basis for the
4 Certificate, including the identity of the person(s) consulted by CEH’s counsel and the facts,
5 studies, or other data reviewed by such persons.

6 40. None of the public prosecutors with the authority to prosecute violations of
7 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
8 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s
9 Notices regarding BPA in the Sports Bras and/or Athletic Shirts.

10 41. Defendants both know and intend for individuals will come into contact with the
11 Sports Bras and/or Athletic Shirts during normal use, thus exposing such individuals to BPA.

12 42. Defendants continue to expose consumers to BPA without prior clear and
13 reasonable warnings regarding the reproductive toxicity of BPA.

14 43. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
15 filing this Complaint.

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

21 **FIRST CAUSE OF ACTION**
22 **(Violations of Health & Safety Code §25249.6**
23 **Regarding Sports Bras as to the Sports Bras Defendants)**

24 45. CEH realleges and incorporates by reference as if specifically set forth herein
25 Paragraphs 1 through 44, inclusive.

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

1 47. BPA is a chemical listed by the State of California as a known female reproductive
2 toxicant.

3 48. Each Sports Bra Defendant knows that average use of the Sports Bras will expose
4 users of these products to BPA. Each Sports Bra Defendant intends that the Sports Bras be used
5 in a manner that results in exposures to BPA from these products.

6 49. Each Sports Bra Defendant has failed, and continues to fail, to provide clear and
7 reasonable warnings regarding the carcinogenicity and reproductive toxicity of BPA to users of
8 its Sports Bras.

9 50. By committing the acts alleged above, each Sports Bra Defendant has at all times
10 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
11 individuals to BPA without first giving clear and reasonable warnings to such individuals
12 regarding the reproductive toxicity of BPA.

13 **SECOND CAUSE OF ACTION**
14 **(Violations of Health & Safety Code §25249.6**
15 **Regarding Athletic Shirts as to the Athletic Shirts Defendants)**

16 51. CEH realleges and incorporates by reference as if specifically set forth herein
17 Paragraphs 1 through 50, inclusive.

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

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

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

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

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Dated: February 9, 2023

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH