

LEXINGTON LAW GROUP, LLP
Mark N. Todzo, State Bar No. 168389
Patrick R. Carey, State Bar No. 308623
Joseph Mann, State Bar No. 207968
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
mtodzo@lexlawgroup.com
pcarey@lexlawgroup.com
jmann@lexlawgroup.com

Attorneys for Plaintiffs
CENTER FOR ENVIRONMENTAL HEALTH

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

04/03/2025
Clerk of the Court

BY: SAHAR ENAYATI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-25-623997

CENTER FOR ENVIRONMENTAL HEALTH, a
non-profit corporation,

Plaintiff,

v.

AESOP USA, INC.; DICK'S SPORTING GOODS,
INC.; LOWE'S HOME CENTERS, LLC; ROSS
STORES, INC.; SAKS & COMPANY LLC; SAKS
OFF 5TH LLC; WALMART INC.; and DOES 1
through 100, inclusive,

Defendants.

Civil Case No.:

**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 belief
2 and investigation of counsel, except for information based on knowledge, hereby makes the following
3 allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' ongoing violations of California's
6 Proposition 65, Health & Safety Code §25249.5, *et seq.* Defendants violate Proposition 65 by
7 knowingly and intentionally exposing individuals in California to Bisphenol S ("BPS"), a chemical
8 known to the State of California to cause birth defects and other reproductive harm. Such exposures
9 have occurred, and continue to occur, when individuals handle thermal receipt paper coated with BPS
10 ("Thermal Receipt Paper") that is manufactured, distributed, purchased for use, sold, offered for sale,
11 provided, or offered to be provided by Defendants. Individuals, including women who are pregnant or
12 seeking to become pregnant, are exposed to BPS when they touch or handle the Thermal Receipt Paper.

13 2. Under Proposition 65, it is unlawful for businesses to knowingly and intentionally expose
14 individuals in California to chemicals known to the State to cause birth defects or other reproductive
15 harm without first providing clear and reasonable warnings to exposed individuals. Defendants
16 manufacture, distribute, purchase for use, sell, offer to sell, provide, or offer to provide Thermal Receipt
17 Paper containing significant quantities of BPS to individuals in California, thereby exposing these
18 individuals to BPS.

19 3. Despite the fact that Defendants expose those who are pregnant, those who are seeking to
20 become pregnant, and others to BPS, Defendants provide no warnings whatsoever about the
21 reproductive hazards associated with BPS exposure. Defendants' conduct thus violates the warning
22 provision 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 exposures.
26 CEH is based in Oakland, California and incorporated under the laws of the State of California. CEH is
27 a "person" within the meaning of Health & Safety Code §25249.11(a) and brings this enforcement
28 action in the public interest pursuant to Health & Safety Code §25249.7(d). CEH is a nationally

1 recognized not-for-profit environmental advocacy group that has prosecuted numerous Proposition 65
2 cases in the public interest. Through its work, CEH has created substantial public benefit, including the
3 reformulation or removal from the market of millions of products harming consumers and the
4 environment. CEH also provides information to Californians about the health risks associated with
5 exposure to hazardous substances when manufacturers and other responsible parties fail to do so.

6 5. Defendant AESOP USA, INC. is a person in the course of doing business within the
7 meaning of Health & Safety Code §25249.11. AESOP USA, INC. manufactures, distributes, purchases
8 for use, sells, offers to sell, provides, or offers to provide Thermal Receipt Paper containing BPS to
9 individuals in California.

10 6. Defendant DICK'S SPORTING GOODS, INC. is a person in the course of doing
11 business within the meaning of Health & Safety Code §25249.11. DICK'S SPORTING GOODS, INC.
12 manufactures, distributes, purchases for use, sells, offers to sell, provides, or offers to provide Thermal
13 Receipt Paper containing BPS to individuals in California.

14 7. Defendant LOWE'S HOME CENTERS, LLC is a person in the course of doing business
15 within the meaning of Health & Safety Code §25249.11. LOWE'S HOME CENTERS, LLC
16 manufactures, distributes, purchases for use, sells, offers to sell, provides, or offers to provide Thermal
17 Receipt Paper containing BPS to individuals in California.

18 8. Defendant ROSS STORES, INC. is a person in the course of doing business within the
19 meaning of Health & Safety Code §25249.11. ROSS STORES, INC. manufactures, distributes,
20 purchases for use, sells, offers to sell, provides, or offers to provide Thermal Receipt Paper containing
21 BPS to individuals in California.

22 9. Defendant SAKS & COMPANY LLC is a person in the course of doing business within
23 the meaning of Health & Safety Code §25249.11. SAKS & COMPANY LLC manufactures, distributes,
24 purchases for use, sells, offers to sell, provides, or offers to provide Thermal Receipt Paper containing
25 BPS to individuals in California.

26 10. Defendant SAKS OFF 5TH LLC is a person in the course of doing business within the
27 meaning of Health & Safety Code §25249.11. SAKS OFF 5TH LLC manufactures, distributes,
28

1 purchases for use, sells, offers to sell, provides, or offers to provide Thermal Receipt Paper containing
2 BPS to individuals in California.

3 11. Defendant WALMART INC. is a person in the course of doing business within the
4 meaning of Health & Safety Code §25249.11. WALMART INC. manufactures, distributes, purchases
5 for use, sells, offers to sell, provides, or offers to provide Thermal Receipt Paper containing BPS to
6 individuals in California.

7 12. DOES 1 through 100 are each a person in the course of doing business within the
8 meaning of Health & Safety Code §25249.11. DOES 1 through 100 each manufacture, distribute,
9 purchase for use, sell, offer to sell, provide, or offer to provide Thermal Receipt Paper containing BPS to
10 individuals in California.

11 13. The true names of DOES 1 through 100 are either unknown to CEH at this time or the
12 applicable time period before which CEH may file a Proposition 65 action has not run. When CEH
13 ascertains the identifies of the DOE Defendants or the applicable time period before which CEH may
14 file a Proposition 65 action has run, CEH will amend the Complaint to reflect the true names and
15 identities of the DOE Defendants.

16 14. The defendants identified in the paragraphs 5 through 11 and DOES 1 through 100 are
17 collectively referred to herein as “Defendants.”

18 **JURISDICTION AND VENUE**

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

22 16. This Court has jurisdiction over Defendants because each is a business entity that either
23 (i) has its principal place of business in California or is headquartered in California; or (ii) does
24 sufficient business, has sufficient minimum contacts in California, or otherwise avails itself of the
25 California market through its manufacture, distribution, purchasing for use, selling, offering to sell,
26 providing, or offering to provide Thermal Receipt Paper in California and such business and contacts
27 gave rise to the claims at issue. Such contacts with California also render the exercise of jurisdiction
28

1 over Defendants by California courts consistent with traditional notions of fair play and substantial
2 justice.

3 17. Venue is proper in San Francisco County Superior Court because one or more of the
4 violations arise in the County of San Francisco.

5 **BACKGROUND FACTS**

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

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

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

16 20. On December 29, 2023, the State of California officially listed BPS as a female
17 reproductive toxicant. 27 California Code of Regulations (“C.C.R.”) §27001(c). On December 29,
18 2024, BPS became subject to the clear and reasonable warning requirement regarding reproductive
19 toxicity under Proposition 65. Health & Safety Code §25249.10(b).

20 21. BPS is intentionally added to the surface of the Thermal Receipt Paper as a functional
21 component of the paper. People who touch, handle, or otherwise come into contact with the surface of
22 Thermal Receipt Paper are thus exposed to BPS.

23 22. Defendants’ Thermal Receipt Paper contains sufficient quantities of BPS such that
24 individuals, including women who are pregnant or seeking to become pregnant, who touch or handle the
25 Thermal Receipt Paper are exposed to significant amounts of BPS. The primary routes of exposure for
26 the violations are dermal absorption directly through the skin when individuals touch or handle Thermal
27 Receipt Paper, and ingestion via hand-to-mouth contact after individuals touch or handle Thermal
28

1 Receipt Paper. These exposures occur in homes, workplaces, retail establishments, and everywhere else
2 throughout California where the Thermal Receipt Paper is touched or handled.

3 23. The addition of BPS in the Thermal Receipt Paper is not necessary, as receipt paper can
4 be produced, processed, packaged, purchased, and provided without BPS.

5 24. Defendants fail to provide any warning, let alone the required clear and reasonable
6 warning, with their Thermal Receipt Paper regarding the reproductive toxicity of BPS.

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

11 26. More than sixty days prior to naming each Defendant in this lawsuit, CEH provided a 60-
12 Day “Notice of Violation” of Proposition 65 to the California Attorney General, to the District Attorneys
13 of every county in California, to the City Attorneys of every California city with a population greater
14 than 750,000, and to each of the named Defendants. In compliance with Health & Safety Code
15 §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following information: (1) the name
16 and address of each violator; (2) the statute violated; (3) the time period during which violations
17 occurred; (4) specific descriptions of the violations, including (a) the routes of exposures to BPS from
18 Defendants’ Thermal Receipt Paper; and (b) the specific type of products sold or provided in violation
19 of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of
20 the violations described in each Notice. Each Notice also included a proposal for resolution of the
21 noticed claims and a demand that Defendants preserve all evidence relevant to the noticed claims.

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

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

28. None of the public prosecutors with the authority to prosecute violations of Proposition 65 have commenced or is diligently prosecuting a cause of action against Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s Notices regarding BPS in Thermal Receipt Paper.

29. Defendants both know and intend that individuals – including those who are pregnant and seeking to become pregnant – touch or handle their Thermal Receipt Paper, thus exposing them to BPS.

30. Under Proposition 65, an exposure is “knowing” where the party responsible for such exposure has:

knowledge of the fact that a[n] ... exposure to a chemical listed pursuant to [Health & Safety Code §25249.8(a)] is occurring. No knowledge that the ... exposure is unlawful is required.

27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §12601).

31. Defendants continue to expose individuals to BPS without prior clear and reasonable warnings regarding the reproductive toxicity of BPS.

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

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

1 **FIRST CAUSE OF ACTION**

2 (Violations of Health & Safety Code §25249.6)

3 34. CEH realleges and incorporates by reference as if specifically set forth herein the
4 paragraphs of this Complaint.

5 35. By placing the Thermal Receipt Paper into the stream of commerce or providing Thermal
6 Receipt Paper to California consumers, each Defendant is a person in the course of doing business
7 within the meaning of Health & Safety Code §25249.11.

8 36. BPS is a chemical listed by the State of California as a known female reproductive
9 toxicant.

10 37. Each Defendant knows that average use of the Thermal Receipt Paper will expose
11 individuals who touch or handle the Thermal Receipt Paper to BPS.

12 38. Each Defendant intends that the Thermal Receipt Paper be used in a manner that results
13 in exposures to BPS from these products.

14 39. Each Defendant has failed, and continues to fail, to provide clear and reasonable
15 warnings regarding the reproductive toxicity of BPS to individuals who touch or handle its Thermal
16 Receipt Paper.

17 40. By committing the acts alleged above, each Defendant has at all times relevant to this
18 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to BPS without
19 first giving clear and reasonable warnings to such individuals regarding the reproductive toxicity of
20 BPS.

21 **PRAYER FOR RELIEF**

22 CEH prays for judgment against Defendants as follows:

23 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
24 permanently enjoin Defendants from either offering the Thermal Receipt Paper that will be sold in
25 California or providing the Thermal Receipt Paper to California consumers without either reducing the
26 BPS levels in their Thermal Receipt Paper such that no Proposition 65 warnings are required or
27 providing prior clear and reasonable warnings, as CEH shall specify in further application to the Court;
28

1 2.T hat the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties
2 against each Defendant in the amount of \$2,500 per day for each violation of Proposition 65 according
3 to proof;

4 3.T hat the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to take
5 action to stop ongoing unwarned exposures to BPS resulting from the use of Thermal Receipt Paper sold
6 or provided to consumers by Defendants, as CEH shall specify in further application to the Court;

7 4.T hat the Court, pursuant to Code of Civil Procedure §1021.5 or any other applicable
8 theory, grant CEH its reasonable attorneys' fees and costs of suit; and

9 5.T hat the Court grant such other and further relief as may be just and proper.

10
11 Dated: April 3, 2025

Respectfully submitted,

12 LEXINGTON LAW GROUP, LLP

13 
14

15 Mark Todzo
16 Patrick Carey
17 Joseph Mann
18 Attorneys for Plaintiff
19 Center for Environmental Health
20
21
22
23
24
25
26
27
28