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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
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12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 A.D. SUTTON & SONS, INC.; ACCESSORY)
17 NETWORK GROUP, INC.; E.S. ORIGINALS,)
18 INC.; GLOBAL DESIGNS CONCEPTS, INC.;)
LEGENT INTERNATIONAL LTD.; and)
19 Defendant DOES 1 through 200, inclusive,)

20 Defendants.)
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ENDORSED
FILED
Superior Court of California
County of San Francisco

OCT - 6 2008

GORDON PARK-LI, Clerk
BY: MARIA SANCHEZ
Deputy Clerk

Case No. CGC-08-476552

FIRST AMENDED COMPLAINT

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

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This First Amended Complaint seeks to remedy Defendants' continuing
6 failure to warn individuals in California that they are being exposed to lead and lead compounds
7 (collectively, "Lead"), chemicals known to the State of California to cause cancer and birth
8 defects or other reproductive harm. Such exposures have occurred, and continue to occur,
9 through the manufacture, distribution, sale and use of Defendants' backpacks ("Backpacks") or
10 personal carrying products, such as bags, messenger bags, diaper bags, bottle bags, children's
11 purses, children's duffels, cosmetic bags, backpacks, totes, rolling backpacks, fanny packs and
12 wallets ("Personal Carrying Products"). Consumers, including children, are exposed to Lead
13 when they use the Backpacks and Personal Carrying Products.

14 2. Under California's Proposition 65, Health and Safety Code §25249.5, *et*
15 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
16 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
17 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
18 introduce Backpacks and/or Personal Carrying Products contaminated with significant quantities
19 of Lead into the California marketplace, exposing consumers of their Backpacks and/or Personal
20 Carrying Products, many of whom are children, to Lead.

21 3. Despite the fact that Defendants expose children and other consumers to
22 Lead, Defendants provide no warnings whatsoever about the carcinogenic or reproductive
23 hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision
24 of Proposition 65. Health & Safety Code §25249.6.

25 **PARTIES**

26 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
27 non-profit corporation dedicated to protecting the public from environmental health hazards and
28 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the

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

9 5. Defendant A.D. SUTTON & SONS, INC. (“Sutton”) is a person in the
10 course of doing business within the meaning of Health & Safety Code §25249.11. Sutton
11 manufactures, distributes and/or sells Personal Carrying Products containing Lead for sale and
12 use in California.

13 6. Defendant ACCESSORY NETWORK GROUP, INC. (“ANG”) is a
14 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
15 ANG manufactures, distributes and/or sells Personal Carrying Products containing Lead for sale
16 and use in California.

17 7. Defendant E.S. ORIGINALS, INC. (“ESO”) is a person in the course of
18 doing business within the meaning of Health & Safety Code §25249.11. ESO manufactures,
19 distributes and/or sells Backpacks containing Lead for sale and use in California.

20 8. Defendant GLOBAL DESIGNS CONCEPTS, INC. (“GDC”) is a person
21 in the course of doing business within the meaning of Health & Safety Code §25249.11. GDC
22 manufactures, distributes and/or sells Backpacks containing Lead for sale and use in California.

23 9. Defendant LEGENT INTERNATIONAL LTD (“Legent”) is a person in
24 the course of doing business within the meaning of Health & Safety Code §25249.11. Legent
25 manufactures, distributes and/or sells Backpacks containing Lead for sale and use in California.

26 10. DOES 1 through 100 are each a person in the course of doing business
27 within the meaning of Health & Safety Code §25249.11. DOES 1 through 100 manufacture,
28 distribute and/or sell Backpacks containing Lead for sale or use in California.

1 11. DOES 101 through 200 are each a person in the course of doing business
2 within the meaning of Health & Safety Code §25249.11. DOES 101 through 200 manufacture,
3 distribute and/or sell Personal Carrying Products containing Lead for sale or use in California.

4 12. The true names of DOES 1 through 200 are unknown to CEH at this time.
5 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

6 13. The defendants identified in paragraphs 5 through 9, inclusive, and DOES
7 1 through 200, are collectively referred to herein as "Defendants."

8 JURISDICTION AND VENUE

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

13 15. This Court has jurisdiction over the Defendants because each is a business
14 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
15 intentionally avails itself of the California market through the sale, marketing or use of the
16 Backpacks and/or Personal Carrying Products in California and/or by having such other contacts
17 with California so as to render the exercise of jurisdiction over it by the California courts
18 consistent with traditional notions of fair play and substantial justice.

19 16. Venue is proper in the San Francisco Superior Court because one or more
20 of the violations arise in the County of San Francisco.

21 BACKGROUND FACTS

22 17. The People of the State of California have declared by initiative under
23 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth
24 defects, or other reproductive harm." Proposition 65, §1(b).

25 18. To effectuate this goal, Proposition 65 requires that individuals be
26 provided with a "clear and reasonable warning" before being exposed to chemicals listed by the
27 State of California as known to cause cancer, birth defects or other reproductive harm unless the
28

1 business responsible for the exposure can prove that it fits within a statutory exemption. Health
2 & Safety Code §25249.6 states, in pertinent part:

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

6 19. On February 27, 1987, the State of California officially listed lead as a
7 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
8 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
9 the developing fetus, “female reproductive toxicity,” which means harm to the female
10 reproductive system, and “male reproductive toxicity,” which means harm to the male
11 reproductive system. 27 California Code of Regulations (“CCR”) §27001(c). On February 27,
12 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
13 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
14 under Proposition 65. 27 CCR §27001(c); Health & Safety Code §25249.10(b).

15 20. On October 1, 1992, the State of California officially listed lead and lead
16 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
17 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
18 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 CCR
19 §27001(c); Health & Safety Code §25249.10(b).

20 21. Young children are especially susceptible to the toxic effects of Lead.
21 Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts
22 from Lead exposure generally occur in children at lower blood Lead levels than in adults.
23 Children absorb and retain more Lead in proportion to their weight than do adults. Young
24 children also show a greater prevalence of iron deficiency, a condition that can increase
25 gastrointestinal absorption of Lead. The body accumulates Lead over a lifetime and releases it
26 slowly, so even small doses received in childhood, over time, can cause adverse health impacts,
27 including but not limited to reproductive toxicity, later in life. For example, in times of
28 physiological stress, such as pregnancy, the body can mobilize accumulated stores of Lead in

1 tissue and bone, thereby increasing the level of Lead in the blood and increasing the risk of harm
2 to the fetus.

3 22. There is no safe level of exposure to Lead and even minute amounts of
4 Lead exposure have been shown to permanently reduce mental capacity. Davis, JM,
5 Svendgaard, DJ; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the
6 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
7 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
8 BP, Dietrich, K, Auinger, P, Cox, C; "Subclinical Lead Toxicity in U.S. Children and
9 Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
10 children into adulthood and found a sevenfold increase in the risk for developing a reading
11 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, HL,
12 Schell, A, Bellinger, D, Leviton, A, Allred, EN; "The Long-Term Effects of Exposure to Low
13 Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*;
14 322:83-88, 1990.

15 23. Defendants' Backpacks and/or Personal Carrying Products contain
16 sufficient quantities of Lead such that consumers, including children, who handle the Backpacks
17 and/or Personal Carrying Products and handle and ingest items stored inside the Backpacks
18 and/or Personal Carrying Products are exposed to Lead through the average use of the
19 Backpacks and/or Personal Carrying Products. The route of exposure for the violations is direct
20 ingestion when consumers, including children, place items that have been stored in the
21 Backpacks and/or Personal Carrying Products in their mouths; ingestion via hand to mouth
22 contact after consumers, including children, touch or handle the Backpacks and/or Personal
23 Carrying Products or items that have been stored in the Backpacks and/or Personal Carrying
24 Products; and dermal absorption directly through the skin when consumers, including children,
25 touch or handle the Backpacks and/or Personal Carrying Products or items that have been stored
26 in the Backpacks and/or Personal Carrying Products.

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

1 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
2 action within such time. Health & Safety Code §25249.7(d).

3 25. 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,
5 the District Attorneys of every county in California, the City Attorneys of every California city
6 with a population greater than 750,000 and to each of the named Defendants. In compliance
7 with Health & Safety Code §25249.7(d) and 27 CCR §25903(b), each of the Notices included
8 the following information: (1) the name and address of the violators; (2) the statute violated; (3)
9 the time period during which violations occurred; (4) specific descriptions of the violations,
10 including (a) the routes of exposure to Lead from the Backpacks and/or Personal Carrying
11 Products, and (b) the specific type of products sold and used in violation of Proposition 65; and
12 (5) the name of the specific Proposition 65-listed chemical (Lead) that is the subject of the
13 violations described in each of the Notices.

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

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

1 Proposition 65 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims
2 asserted in the Notice.

3 28. Defendants both know and intend that individuals, including children, will
4 handle the Backpacks and/or Personal Carrying Products and handle and ingest items stored
5 inside the Backpacks and/or Personal Carrying Products, thus exposing them to Lead.

6 29. The Backpacks and/or Personal Carrying Products are typically made
7 from polyvinyl chloride (“PVC”). The association between PVC and Lead exposure has been
8 widely discussed in the media in recent years, with particular attention given to products made
9 from PVC that are marketed exclusively to children. Defendants’ Backpacks and/or Personal
10 Carrying Products are also made with pigments, many of which contain Lead. Many of the
11 Defendants’ Backpacks and/or Personal Carrying Products are exclusively made for and
12 marketed to children.

13 30. Defendants have been informed of the Lead in their Backpacks and/or
14 Personal Carrying Products by the 60-Day Notice of Violation served on them by CEH and from
15 newspaper reports. Defendants have also been informed of the Lead in their Backpacks and/or
16 Personal Carrying Products by previous Proposition 65 lawsuits regarding other goods
17 manufactured by Defendants that are made with the same materials as the Backpacks and/or
18 Personal Carrying Products, including PVC.

19 31. Nevertheless, Defendants continue to expose consumers, including
20 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
21 reproductive hazards of Lead.

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

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

1 **FIRST CAUSE OF ACTION**

2 **(Violations of the Health & Safety Code §25249.6)**

3 34. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 32 inclusive.

5 35. By placing the Backpacks and/or Personal Carrying Products into the
6 stream of commerce, Defendants are a person in the course of doing business within the meaning
7 of Health & Safety Code §25249.11.

8 36. Defendants know that average use of the Backpacks and/or Personal
9 Carrying Products will expose users of the Backpacks and/or Personal Carrying Products to
10 Lead. Defendants intend that the Backpacks and/or Personal Carrying Products be used in a
11 manner that results in users of the Backpacks and/or Personal Carrying Products being exposed
12 to Lead contained in the Backpacks and/or Personal Carrying Products.

13 37. The Defendants have failed, and continue to fail, to provide clear and
14 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
15 the Backpacks and/or Personal Carrying Products.

16 38. Lead is a chemical listed by the State of California as known to cause
17 cancer, birth defects and other reproductive harm.

18 39. By committing the acts alleged above, the Defendants have at all times
19 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
20 individuals to Lead without first giving clear and reasonable warnings to such individuals
21 regarding the carcinogenicity and reproductive toxicity of Lead.

22 Wherefore, CEH prays judgment against the Defendants, as set forth hereafter.

23 **PRAYER FOR RELIEF**

24 Wherefore, CEH prays for judgment against Defendants as follows:

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

28 2. That the Court, pursuant to Health & Safety Code §25249.7(a),

1 Backpacks and/or Personal Carrying Products are exposed to a “significant amount” of Lead
2 under Proposition 65 without providing clear and reasonable warnings, as CEH shall specify in
3 further application to the Court;

4 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
5 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
6 Backpacks and/or Personal Carrying Products sold by Defendants, as CEH shall specify in
7 further application to the Court;

8 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other
9 applicable theory, grant CEH its reasonable attorneys’ fees and costs of suit; and

10 5. That the Court grant such other and further relief as may be just and
11 proper.

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13 Dated: October 6, 2008

Respectfully submitted,

14 LEXINGTON LAW GROUP, LLP

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17 Mark N. Todzo
18 Attorneys for Plaintiff
19 CENTER FOR ENVIRONMENTAL HEALTH
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1 **PROOF OF SERVICE**

2 I declare that:

3 I am employed in San Francisco County, California. I am over the age of 18 years and
4 not a party to the within cause; my business address is 1627 Irving Street, San Francisco,
5 California 94122. I am readily familiar with my firms' practice for collection and processing of
6 correspondence with the United States Postal Service.

7 On October 6, 2008, I served true copies of the following document:

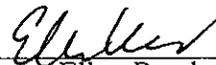
8 **FIRST AMENDED COMPLAINT**

9 I mailed envelopes containing the above-mentioned document to the following
10 individuals:

11 *Please see attached Service List.*

12 I declare under penalty of perjury that the foregoing is true and correct, and that these
13 envelopes were fully prepaid, sealed, and deposited in the mail on this date, October 6, 2008, at
14 San Francisco, California, following ordinary business practices.

15 Signed: _____

16 
17 Ellen Reed

Service List
CEH v. A.D. Sutton & Sons, Inc., et al
CGC-08-476552

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