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County of Santa Clara
19CV346101
Reviewed By: Y. Chavez
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8 *ex rel. Xavier Becerra, Attorney General, and*
Meredith J. Williams, Acting Director, Dept. of
9 *Toxic Substances Control*

Fee Exempt Gov. Code 6103

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 SANTA CLARA COUNTY

13 **PEOPLE OF THE STATE OF CALIFORNIA,**
14 **EX REL. XAVIER BECERRA, ATTORNEY**
15 **GENERAL; AND PEOPLE OF THE STATE**
16 **OF CALIFORNIA, EX REL. MEREDITH J.**
17 **WILLIAMS, ACTING DIRECTOR,**
18 **DEPARTMENT OF TOXIC SUBSTANCES**
19 **CONTROL,**

20 **LE BELLE MERCHANDISE CORP., AND**
21 **DOES 1-20,**

Case No. 19CV346101

**COMPLAINT FOR CIVIL PENALTY
AND INJUNCTIVE RELIEF AS TO LE
BELLE MERCHANDISE CORP.**

Plaintiffs,

v.

Defendants.

24 **I. INTRODUCTION**

25 Plaintiffs, the People of the State of California (“People”), ex rel. Xavier Becerra, Attorney
26 General (“Attorney General”), and ex rel. Meredith J. Williams, Acting Director, Department of
27 Toxic Substances Control (“the Department”), allege as follows:
28

1 17204 and 17535 provide that actions to enforce sections 17500, 17508 and 17200 may be
2 brought by the Attorney General. The Attorney General is authorized to commence an action
3 under the HWCL in the name of the People at the request of the Department. (Health & Saf.
4 Code, § 25182.) The Department has asked the Attorney General to initiate this action for
5 violations of the Metal Containing Jewelry law.

6 7. Defendant Le Belle Merchandise Corp. (“Le Belle”) is a business entity that
7 manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry for retail
8 sale or promotional purposes in California. Whenever reference is made in this complaint to any
9 act or transaction of defendant Le Belle, that allegation shall be deemed to mean that Le Belle did
10 or authorized the acts alleged in this complaint through its principals, officers, directors,
11 employees, members, agents or representatives while they were acting within the actual or
12 ostensible scope of their authority.

13 8. The true names and capacities of the defendants sued herein as DOES 1 through 20
14 are unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend
15 this complaint to allege the true names and capacities of these defendants when they have been
16 determined. Each of the fictitiously named defendants is responsible in some manner for the
17 conduct alleged herein.

18 9. Whenever reference is made in this complaint to “Defendants,” such reference,
19 unless otherwise specified, includes the defendant named in paragraph 7 and Does 1 through 20.
20 References made to one or more specifically-identified defendants do not include defendants not
21 identified within the same reference.

22 JURISDICTION AND VENUE

23 10. This Court has jurisdiction to hear this matter, and the Court has jurisdiction over
24 each defendant named above. Venue is proper in this Court because the principal office of at
25 least some of the defendants is located in the County of Santa Clara and because some of the
26 violations of law alleged herein have been and are being carried out within the County of Santa
27 Clara.

1 weight that is electroplated with suitable under and finish coats; electroplated metal that, on and
2 after August 31, 2009, is made of a metal alloy with less than 6 percent lead by weight that is
3 electroplated with suitable under and finish coats; unplated metal with less than 1.5 percent lead
4 that is not otherwise listed as a class 1 material; a dye or surface coating containing less than 0.06
5 percent (600 parts per million (“ppm”)) lead by weight. “Class 2 material” also includes plastic
6 or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride
7 (“PVC”) that meets the following standards: (A) On and before August 30, 2009, containing less
8 than 600 ppm lead by weight; or (B) On and after August 31, 2009, containing less than 200 ppm
9 lead by weight. (Health & Saf. Code, § 25214.1, subd. (e).)

10 15. “Class 3 material” means any portion of jewelry that is not a class 1 or class 2
11 material *and* contains less than 600 ppm lead by weight. (Health & Saf. Code, § 25214.1, subd.
12 (f).)

13 16. For children ages six years and under, the statute provides even stricter lead
14 standards. (Health & Saf. Code, § 25214.2, subd. (b); *see id.*, § 25214.1, subds. (b), (c).)
15 Children’s metallic jewelry and any printing ink or ceramic glaze must contain less than 600 ppm
16 of lead by weight. (Health & Saf. Code, § 25214.2, subds. (b)(3), (b)(5).) Small glass or crystal
17 decorative jewelry and any “Class 3 material” that meets the statute’s definition of “children’s
18 jewelry” are limited to less than 200 ppm of lead by weight and cannot contain any intentionally
19 added lead. (*Id.*, § 25214.2, subds. (b)(4), (b)(6).)

20 17. The Legislature broadly defined “Children’s jewelry” as “jewelry that is made for,
21 marketed for use by, or marketed to children,” including, but not limited to jewelry: whose
22 packaging, display, or advertising represents that it is appropriate for use by children; “[s]old in
23 conjunction with, attached to, or packaged together with other products that are packaged,
24 displayed, or advertised as appropriate for use by children;” “[s]ized for children and not intended
25 for use by adults;” sold in a vending machine; or sold in a retail store, catalog, or Internet site that
26 either “exclusively offers for sale products that are packaged, displayed, or advertised as
27 appropriate for use by children,” or that dedicates a discrete portion of space to such products.
28 (Health & Saf. Code, § 25214.1, subds. (c)(1)–(4).)

1. 18. The statute places an additional burden on manufacturers and suppliers of jewelry
2 that is “sold, offered for sale, or offered for promotional purposes” to provide technical
3 documentation and certification of compliance with the Metal Containing Jewelry law. (Health &
4 Saf. Code, § 25214.3.) California Health and Safety Code section 25214.3, subdivision (b),
5 provides that the certification “shall attest that the jewelry does not contain a level of lead . . . that
6 prohibits the jewelry from being sold or offered for sale pursuant to [the Metal Containing
7 Jewelry law].” A manufacturer or supplier must either: “[p]rovide the certification . . . to a
8 person who sells or offers for sale that manufacturer’s or supplier’s jewelry” or “display the
9 certification . . . prominently on the shipping container or on the packaging of jewelry.” (*Id.*, §
10 25214.3, subs. (c)(1)–(2).)

11 19. A person who violates the Metal Containing Jewelry law “shall be liable for a[] . . .
12 civil penalty not to exceed [\$2,500] per day for each violation.” (Health & Saf. Code, § 25214.3,
13 subd. (b)(1).) The penalty may be assessed or recovered in a civil action brought in any court of
14 competent jurisdiction. (*Ibid.*)

15 20. The statute authorizes the Department to inspect a factory, warehouse, or
16 establishment where jewelry is manufactured, packed, held, or sold. (Health & Saf.
17 Code, § 25214.3, subd. (d).) Upon obtaining consent or an inspection warrant, an authorized
18 representative of the Department may inspect the facility and its paperwork, and secure samples
19 of jewelry for its investigation. (*Ibid.*)

20 **B. The Unfair Competition Act**

21 21. California Business and Professions Code section 17200 provides that “unfair
22 competition shall mean and include unlawful, unfair or fraudulent business practice.” Unlawful
23 acts under the statute include any act that is unlawful that is conducted as part of business
24 activity, and therefore include violations of state or federal laws and regulations.

25 22. Section 17203 of the Business and Professions Code provides that “(a)ny person
26 performing or proposing to perform an act of unfair competition within this state may be enjoined
27 in any court of competent jurisdiction.”
28

1 23. Business and Professions Code section 17206, subdivision (a), provides that any
2 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five
3 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil
4 action brought in the name of the people of the State of California by the Attorney General”
5 Under section 17205, these penalties are “cumulative to each other and to the remedies or
6 penalties available under all other laws of this state.”

7 **GENERAL ALLEGATIONS**

8 24. Defendants are entities that manufacture, ship, sell, offer for sale, or offer for
9 promotional purposes jewelry for retail sale or promotional purposes in California. Some of the
10 jewelry contains lead or cadmium that far exceeds the legal limits placed on lead in jewelry sold
11 or offered for sale or promotional purposes in the State. Despite widespread publicity and
12 concern about this problem, the Department has traced several styles of jewelry that violate the
13 lead or cadmium standards to Defendants. Some of the jewelry is intended for young children.

14 25. When the Department conducts an inspection for compliance with the Metal
15 Containing Jewelry law, its authorized representatives screen jewelry being sold or offered for
16 sale by the business for lead and cadmium with a portable X-Ray Fluorescence (“XRF”) device.
17 When the XRF device detected high lead or cadmium levels, or when the Department had other
18 reasons to suspect that a jewelry style contained excess lead or cadmium, inspectors collected
19 jewelry samples for laboratory testing using methods prescribed by the Metal Containing Jewelry
20 law.

21 26. On November 16, 2017, the Department conducted an investigation of Le Belle,
22 located at 851 Commercial Street, San Jose, California. During the inspection, it identified eight
23 jewelry items that screened high for lead using the XRF device. It removed samples of the eight
24 items for further testing. Following testing at the Department’s Environmental Chemistry
25 Laboratory, the Department determined that all eight of the items collected from Le Belle
26 contained lead in excess of legal limits.

27
28

1 27. During the inspection described above, the Department determined that the Le Belle
2 did not have in its possession, and had not prepared, technical documentation or prepared
3 certifications for the jewelry they sold, offered for sale, or offered for promotional purposes.

4 **FIRST CAUSE OF ACTION**

5 **[Against All Defendants]**

6 **VIOLATIONS OF HEALTH AND SAFETY CODE SECTION 25214.2(a):**

7 **ADULT JEWELRY**

8 **(METAL CONTAINING JEWELRY LAW)**

9 28. Plaintiff realleges and incorporates herein by reference all paragraphs above as
10 though set forth here in full.

11 29. Each defendant is a “person” within the meaning of Health and Safety Code section
12 25214.2, subdivision (a), which makes it illegal for a person to manufacture, ship, sell, offer for
13 sale, or offer for promotional purposes jewelry for retail sale or promotional purposes in the state
14 of California, unless the jewelry is made entirely from Class 1, Class 2, or Class 3 materials, or
15 any combination of those materials.

16 30. Within the past five years, Defendants have violated Health and Safety Code section
17 25214.2, subdivision (a), by manufacturing, shipping, selling, or offering for sale or for
18 promotional purposes in California jewelry that is not made entirely from Class 1, Class 2, or
19 Class 3 materials, or any combination of those materials. The jewelry contains components or
20 materials with lead content that exceeds permissible levels for Class 1, Class 2, or Class 3
21 materials.

22 31. The following allegation is likely to have evidentiary support after a reasonable
23 opportunity for further investigation or discovery: Defendants have violated and continue to
24 violate Health and Safety Code section 25214.2, subdivision (a), by manufacturing, shipping,
25 selling, or offering for sale or for promotional purposes in California jewelry that is not made
26 entirely from Class 1, Class 2, or Class 3 materials, or any combination of those materials.

27 32. Said violations render each defendant liable for civil penalties not to exceed \$2,500
28 per day for each violation, as well as other remedies.

1 **SECOND CAUSE OF ACTION**

2 **[Against All Defendants]**

3 **VIOLATIONS OF HEALTH AND SAFETY CODE SECTION 25214.2(b):**

4 **CHILDREN'S JEWELRY**

5 **(METAL CONTAINING JEWELRY LAW)**

6 33. Plaintiff realleges and incorporates herein by reference all paragraphs above as
7 though set forth here in full.

8 34. Each defendant is a "person" within the meaning of Health and Safety Code section
9 25214.2, subdivision (b), which makes it illegal for a person to manufacture, ship, sell, offer for
10 sale, or offer for promotional purposes children's jewelry for retail sale or promotional purposes
11 in the state of California, unless the jewelry is made entirely from one or more of the materials
12 listed in Health and Safety Code sections 25214.2, subdivisions (b)(1)-(6).

13 35. "Children's jewelry" means jewelry that is made for, marketed for use by, or
14 marketed to, children six years of age and younger.

15 36. Within the past five years, Defendants have violated Health and Safety Code section
16 25214.2, subdivision (b), by manufacturing, shipping, selling, or offering for sale or for
17 promotional purposes in California children's jewelry that is not made entirely from one or more
18 of the materials listed in Health and Safety Code sections 25214.2, subdivisions (b)(1)-(6). The
19 jewelry contains components or materials with lead content that exceeds permissible California
20 levels for children's jewelry.

21 37. The following allegation is likely to have evidentiary support after a reasonable
22 opportunity for further investigation or discovery: Defendants have violated and continue to
23 violate Health and Safety Code section 25214.2, subdivision (b), by manufacturing, shipping,
24 selling, or offering for sale or for promotional purposes in California children's jewelry that is not
25 made entirely from one or more of the materials listed in Health and Safety Code section 25214.2,
26 subdivisions (b)(1)-(6).

27 38. Said violations render each defendant liable for civil penalties not to exceed \$2,500
28 per day for each violation, as well as other remedies.

1 **THIRD CAUSE OF ACTION**

2 **[Against All Defendants]**

3 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
4 **(UNFAIR COMPETITION LAW)**

5 39. Plaintiff realleges and incorporates herein by reference all paragraphs above as
6 though set forth here in full.

7 40. Defendants have, within the previous four years, engaged in unlawful, unfair or
8 fraudulent business acts or practices which constitute unfair competition within the meaning of
9 Business and Professions Code section 17200. Such unfair competition includes, but is not
10 limited to, violations of Health and Safety Code section 25214.2 as set forth in the First and
11 Second Causes of Action.

12 41. Said violations render each defendant liable for civil penalties not to exceed \$2,500
13 for each violation, as well as other remedies.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays that this Court:

16 1. Pursuant to the First, Second, and Third Causes of Action, grant civil penalties
17 according to proof.

18 2. Pursuant to Health and Safety Code section 25181, subdivision (a), enter such
19 temporary restraining orders, preliminary injunctions, permanent injunctions, declarations, or
20 other orders prohibiting Defendants, and each of them, and their successors, agents,
21 representatives, employees, and all persons who act in concert with them, from violating the
22 Metal Containing Jewelry law, including, but not limited to, the violations alleged in the First and
23 Second Causes of Action;

24 3. Pursuant to Business and Professions Code section 17203, enter such temporary
25 restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting
26 Defendants, and each of them, and their successors, agents, representatives, employees, and all
27 persons who act in concert with them, from selling non-compliant leaded jewelry in California,
28 and from committing any acts of unfair competition in violation of Business and Professions

1 Code section 17200, including, but not limited to, the violations alleged in the Third Cause of
2 Action;

3 4. Enter such orders as “may be necessary to restore to any person in interest any money
4 or property, real or personal, which may have been acquired by means of” these unlawful acts,
5 untrue or misleading representations or false or misleading advertising claims as provided for in
6 Business and Professions Code section 17203;

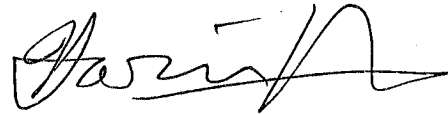
7 5. Award Plaintiffs their costs of suit; and

8 6. Grant such other and further relief as the Court deems just and proper.

9
10 Dated: April 4, 2019

Respectfully Submitted,

11 XAVIER BECERRA
12 Attorney General of California

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14 HARRISON POLLAK
15 Supervising Deputy Attorney General
16 *Attorneys for Plaintiffs*
17 *People of the State of California, ex rel.*
18 *Xavier Becerra, Attorney General, and*
19 *People of the State of California, ex rel.*
20 *Meredith J. Williams, Acting Director,*
21 *Department of Toxic Substances Control*

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