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F I L E D
Clerk of the Superior Court

DEC 05 2014

By: _____ Deputy

5 *Attorneys for Plaintiff, Evelyn Wimberley*

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF SAN DIEGO**
9 **UNLIMITED CIVIL JURISDICTION**

12 **EVELYN WIMBERLEY,**)
13)
14 **Plaintiff,**)
15 **and**)
16 **The Sports Authority; TSA Stores, Inc**)
17)
18 **DOES 1-25 INCLUSIVE**)
19 **Defendants.**)

CASE NO.: 37-2014-00041238-CU-NP-CTL
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
(Cal. Health & Safety Code § 25249.6 et seq.)

21 **NATURE OF THE ACTION**

22 1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,
23 in the public interest of the citizens of the State of California, to enforce the people's right to be
24 informed of the presence of lead, a toxic chemical found in TSA Stores, Inc.'s SA Gear Brass
25 Whistles (UPC 003700029650), (hereafter "Whistles"), sold in California.

26 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
27 warn California citizens about their exposure to lead present in or on certain components of the
28

1 Whistles that defendants manufacture, distribute and/or offer for sale to consumers throughout
2 the State of California.

3 3. High levels of lead are commonly found in Whistles that defendants manufacture,
4 distribute and/or offer for sale to consumers throughout the State of California.

5 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
6 California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No person in the course of
7 doing business shall knowingly and intentionally expose any individual to a chemical known to
8 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
9 warning to such individual..." (*Cal. Health & Safety Code § 25249.6.*)

10 5. California identified and listed Lead as a chemical known to cause birth defects
11 and other reproductive harm. Lead became subject to the warning requirements of Proposition 65
12 for developmental toxicity beginning on February 27, 1987 and for cancer toxicity on October 1,
13 1992. (*27 CCR § 27002; Cal. Health & Safety Code § 25249.6.*)

14 6. Lead and lead compounds shall hereinafter be referred to as the "LISTED
15 CHEMICALS."

16 7. Defendants manufacture, distribute and/or sell Whistles containing excessive
17 levels of the LISTED CHEMICALS. All such Whistles containing the LISTED CHEMICALS
18 shall hereinafter be referred to as the "PRODUCTS."

19 8. Defendants' failures to warn consumers and/or other individuals in the State of
20 California about their exposure to the LISTED CHEMICALS in conjunction with defendant's
21 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of
22 such conduct as well as civil penalties for each such violation.

23 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
24 and permanent injunctive relief to compel defendants to provide purchasers or users of the
25 PRODUCTS with the required warning regarding the health hazards of the LISTED
26 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

27 10. Plaintiff also seeks civil penalties against defendants for their violations of
28 Proposition 65, as provides for by California Health & Safety Code § 25249.7(b).

1 **PARTIES**

2 11. Plaintiff Evelyn Wimberley is a citizen of the City of Redondo Beach, County of
3 Los Angeles, in the State of California, who is dedicated to protecting the health of California
4 citizens through the elimination or reduction of toxic exposures from consumer products, and
5 brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

6 12. Defendant TSA Stores, Inc. (“TSA”) is a person doing business within the
7 meaning of California Health & Safety Code § 25249.11.

8 13. Defendant The Sports Authority (“Sports Authority”) is a person doing business
9 within the meaning of California Health & Safety Code § 25249.11.

10 14. Defendant DOES 1-25 are persons doing business within the meaning of
11 California Health & Safety Code § 25249.11

12 15. Defendant manufactures, distributes, and/or offers the PRODUCTS for sales or use
13 in the State of California or implies by its conduct that it manufactures, distributes and/or offers
14 the PRODUCTS for sale or use in the State of California.

15 **VENUE AND JURISDICTION**

16 16. Venue is proper in the San Diego County Superior Court, pursuant to Code of
17 Civil Procedure § § 394, 495, 395.5, because this Court is a court of competent jurisdiction,
18 because one or more instances of wrongful conduct occurred, and continues to occur, in the
19 County of San Diego and/or because DEFENDANTS conducted, and continue to conduct,
20 business in this County with respect to the PRODUCTS.

21 17. The California Superior Court has jurisdiction over this action pursuant to
22 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
23 all causes except those given by statute to other trial courts.” The statute under which this action
24 is brought does not specify any other basis of subject matter jurisdiction.

25 18. The California Superior Court has jurisdiction over DEFENDANTS based on
26 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
27 association that either are citizens of the State of California, have sufficient minimum contacts in
28 the State of California, or otherwise purposefully avail themselves of the California market.

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
2 courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against Defendant)**

5 19. Plaintiff realleges and incorporates by reference, as if full reference, as if full set
6 forth herein, Paragraphs 1 through 18, inclusive.

7 20. The citizens of the State of California have expressly stated in the Safe Drinking
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
9 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
10 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

11 21. Proposition 65 states, “No person in the course of doing business shall knowingly
12 and intentionally expose any individual to a chemical known to the state to cause cancer or
13 productive toxicity without first giving clear and reasonable warning to such individual...
14 (*Id.*)”

15 22. On June 23, 2014 a sixty-day notice violation, together with the requisite
16 certificate of merit, was provided to DEFENDANTS, and various public enforcement agencies
17 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
18 the State of California were being exposed to the LISTED CHEMICAL resulting from the
19 reasonably foreseeable users of the PRODUCTS, without the individual purchasers and users
20 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

21 23. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
22 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
23 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
24 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
25 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
26 believes that such violations will continue to occur into the future.

1 24. After receipt of the claims asserted in the sixty-day notices of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against DEFENDANTS under Proposition 65.

4 25. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
6 limits.

7 26. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
9 CHEMICAL.

10 27. The LISTED CHEMICAL was present in or on the PRODUCTS in such away as
11 to expose individuals to the LISTED CHEMICAL through dermal contact, hand to mouth
12 contact, and/or ingestion etc. during the reasonably foreseeable use of the PRODUCTS.

13 28. The normal and reasonably foreseeable use of he PRODUCTS has caused and
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
15 by 27 CCR§ 25602(b).

16 29. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
18 hand to mouth contact and/or ingestion.

19 30. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
21 accidental participation in the manufacture, distribution and/or offer for sale or use of
22 PRODUCTS to individuals in the State of California.

23 31. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and/or other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

27 32. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact, hand to mouth contact, and/or ingestion resulting from the reasonably foreseeable use of
2 the PRODUCTS, sold by DEFENDENTS without a “clear and reasonable warning,” have
3 suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy or
4 adequate remedy at law.

5 33. As a consequence of the above-described acts, DEFENDANTS are liable for a
6 maximum civil penal of \$2,500 per day for each violation pursuant to California Health& Safety
7 Code § 25249.7(b).

8 34. As a consequence of the above-described acts, California Health & Safety Code §
9 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
10 DEFENDANTS.

11 35. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
12 hereinafter.

13 **PRAYER FOR RELIEF**

14 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

15 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
16 civil penalties against DEFENDANTS, in the amount of \$2,500 per day for each violation
17 alleged herein;, pursuant to

18 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
19 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
20 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
21 warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to the
22 LISTED CHEMICAL;

23 3. That the Court grant plaintiff his reasonable attorneys’ fees and cost of suit; and

24 4. That the Court grant such other and further relief as may be just and proper.

25 Respectfully Submitted,

26 Dated: November 19, 2014

Law Offices of Stephen Ure, PC.

27 By: 

28 Stephen Ure, Esq.
Attorney for Plaintiff
EVELYN WIMBERLEY