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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 MIZUNO USA, INC., WALMART,
14 INC.,
15 Defendants.

Case No.: RC19010563
**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELEIF**
(Violation of Health & Safety Code §25249.5 *et seq.*)

16 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the
17 following cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

19 1. Plaintiff brings this representative action on behalf of all California citizens to
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
21 at the Health and Safety Code § 25249.5 et seq. ("Proposition 65"), which reads, in relevant part,
22 "[n]o person in the course of doing business shall knowingly and intentionally expose any
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
24 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People's right to be informed of the health
27 hazards caused by exposure bisphenol A (BPA), a toxic chemical found in Mizuno batting
28

BY FAX

1 helmets sold and/or distributed by defendants Mizuno USA, Inc. (“Mizuno”) and Walmart, Inc.
2 (“Walmart”) (collectively, “Defendants”) in California.

3 3. BPA is a harmful chemical known to the State of California to cause reproductive
4 toxicity. On May 11, 2015, the State of California listed BPA as a chemical known to the State
5 to cause reproductive toxicity and BPA has come under the purview of Proposition 65
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
7 25249.8 & 25249.10(b).

8 4. Proposition 65 requires all businesses with ten (10) or more employees that
9 operate within California or sell products therein to comply with Proposition 65 regulations.
10 Included in such regulations is the requirement that businesses must label any product containing
11 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
12 intentionally” exposing any person to it.

13 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
14 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
15 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
16 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
17 Code § 25249.7.

18 6. Plaintiff alleges that Defendants manufacture, distribute, sell and/or offer for sale
19 in California, without a requisite exposure warning, Mizuno batting helmets (the “Products”) that
20 expose persons to BPA.

21 7. Defendants’ failure to warn consumers and other individuals in California of the
22 health hazards associated with exposure to BPA in conjunction with the sale, manufacture,
23 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to the
24 enjoinder and civil penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendants for their violations of
26 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendants to provide purchasers or users of the Product with exposure warnings related to the

1 dangers and health hazards associated with exposure to BPA pursuant to Health and Safety Code
2 § 25249.7(a).

3 **PARTIES**

4 10. Plaintiff is a citizen of the State of California acting in the interest of the general
5 public to promote awareness of exposures to toxic chemicals in products sold in California and
6 to improve human health by reducing hazardous substances contained in such items. He brings
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. Mizuno, through its business, effectively manufactures, imports, distributes, sells,
9 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that
10 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
11 California. Plaintiff alleges that defendant Mizuno is a “person” in the course of doing business
12 within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

13 12. Walmart, through its business, effectively imports, distributes, sells, and/or offers
14 the Product for sale or use in the State of California, or it implies by its conduct that it imports,
15 distributes, sells, and/or offers the Product for sale or use in the State of California. Plaintiff
16 alleges that defendant Walmart is a “person” in the course of doing business within the meaning
17 of Health & Safety Code §§ 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

19 13. Venue is proper in the County of Alameda because one or more of the instances
20 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
21 conducted, and continue to conduct, business in the County of Alameda with respect to the
22 Product.

23 14. This Court has jurisdiction over this action pursuant to California Constitution
24 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
25 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
26 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
27 this Court has jurisdiction over this lawsuit.

28

1 21. Defendants have, at all times mentioned herein, acted as a manufacturer,
2 distributor and/or retailer of the Product.

3 22. The Products contain BPA, a hazardous chemical found on the Proposition 65 list
4 of chemicals known to be hazardous to human health.

5 23. The Products do not comply with the Proposition 65 warning requirements.

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since January 9, 2018, continuing until the present, that Defendants have
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to BPA without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of the Notice result from the purchase,
11 acquisition, handling and recommended use of the Product. Consequently, the primary route of
12 exposure to these chemicals is through dermal exposure. Dermal exposure to BPA is possible
13 when the user handles the face guard of the Product. Should the Product ever contact hot water
14 and/or soaps at elevated pH during washing, higher extraction rates of BPA and accumulation of
15 BPA at the surface of the object will result. Finally, while mouthing of the Product does not
16 seem likely, some amount of exposure through ingestion can occur by touching the face guard
17 with subsequent touching of the user's hand to mouth.

18 26. Plaintiff, based on his best information and belief, avers that such exposures will
19 continue every day until clear and reasonable warnings are provided to Product purchasers and
20 users or until this known toxic chemical is removed from the Product.

21 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
22 Products expose individuals to BPA, and Mizuno intends that exposures to BPA will occur by its
23 deliberate, non-accidental participation in the manufacture, importation, distribution, sale and
24 offering of the Product to consumers in California

25 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
26 Complaint.

27 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
28 described acts, Mizuno is liable for a maximum civil penalty of \$2,500 per day per violation.

