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23 Association of Flight Attendants-Communications Workers of America
24 and Maresa Bache

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ASSOCIATION OF FLIGHT ATTENDANTS-
COMMUNICATIONS WORKERS OF
AMERICA; and MARESA BACHE,

Plaintiffs,

v.

TWIN HILL ACQUISITION COMPANY, INC.;
ARAMARK UNIFORM & CAREER APPAREL
GROUP, INC.; TAILORED BRANDS
PURCHASING, LLC; PVH CORP.; and DOES
1-50,

Defendants.

Case No.

RG18911165

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Unlimited Civil Case

(Health & Safety Code section 25249.5 *et*
seq.)

**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 29 2018

**CLERK OF THE SUPERIOR COURT
By: Mahershal Adams**

INTRODUCTION

1. California's Safe Drinking Water and Toxic Enforcement Act ("Proposition 65" or "the Act"), Health & Safety Code section 25249.5, *et seq.*, prohibits any person in the course of doing business from knowingly and intentionally exposing any individual—including both consumers and employees—to a chemical known to the State of California to cause cancer, without first giving clear and reasonable warning of such exposure. (Health & Saf. Code, § 25249.6.)

2. This is a representative action in the public interest to protect the citizens of the State of California and airline employees from highly toxic formaldehyde (gas) that is present in airline uniforms distributed to and worn by flight attendants.

3. Formaldehyde (gas) is a colorless, flammable, pungent gas. In 1987, the U.S. Environmental Protection Agency ("EPA") classified formaldehyde (gas) as a probable human carcinogen, and in 1988, the State of California added it to Proposition 65's list of chemicals known by the State to cause cancer. Since that time, both the International Agency for Research on Cancer ("IARC") and the National Toxicology Program, an interagency program of the Department of Health and Human Services, have named formaldehyde (gas) as a known human carcinogen.

4. Exposure from a formaldehyde (gas)-treated uniform occurs by inhalation from wearing, storing, and close contact with uniform garment pieces ("uniforms" or "garments") treated with formaldehyde. Formaldehyde (gas) is released from the garments when they are worn and used in the intended manner. The primary route of exposure for the violations is inhalation while flight attendants are wearing the garment(s). These exposures occur in homes, cars, airports, airplanes, and workplaces throughout California where the garments are used. Human exposures to formaldehyde (gas) result from the reasonably foreseeable use of the garments and from exposure to the garments. The flight attendants that wear these uniforms and citizens of California have the right to be informed of the presence of formaldehyde (gas) on airline uniforms distributed, sold, or offered for sale in California.

5. Notwithstanding that formaldehyde (gas) is a chemical known to the State of California to cause cancer, each defendant has failed to provide a clear and reasonable warning that the use of certain garments that they have distributed or sold will result in exposure to formaldehyde.

6. Accordingly, by this complaint, plaintiffs seek an order requiring that defendants either discontinue any distribution or sale of products containing formaldehyde or provide a clear, reasonable warning that their use will result in exposure to a chemical known to the State of California to cause cancer. Plaintiffs also seek civil penalties as provided for under the Act and other appropriate relief.

PARTIES

7. Plaintiff ASSOCIATION OF FLIGHT ATTENDANTS-COMMUNICATIONS WORKERS OF AMERICA (“AFA-CWA”) is a non-profit labor organization representing flight attendants employed by airlines across the country, including in California. AFA-CWA brings this action in the public interest as a private attorney general pursuant to Health & Safety Code section 25249.7, subdivision (d).

8. Plaintiff MARESA BACHE is a flight attendant and member of AFA-CWA. Plaintiff BACHE brings this action in the public interest as a private attorney general pursuant to Health & Safety Code section 25249.7, subdivision (d).

9. Defendant TWIN HILL ACQUISITION COMPANY, INC., doing business as Twin Hill Corporate Apparel, is a business entity with 10 or more employees doing business within the scope of Proposition 65. TWIN HILL ACQUISITION COMPANY, INC., distributes, sells, and/or offers for sale in California airline uniforms treated with formaldehyde (gas).

10. Defendant ARAMARK UNIFORM & CAREER APPAREL GROUP, INC., is a business entity with 10 or more employees doing business within the scope of Proposition 65. ARAMARK UNIFORM & CAREER APPAREL GROUP, INC., distributes, sells, and/or offers for sale in California airline uniforms treated with formaldehyde (gas).

11. Defendant TAILORED BRANDS PURCHASING, LLC, is a business entity with 10 or more employees doing business within the scope of Proposition 65. TAILORED BRANDS

1 PURCHASING, LLC, distributes, sells, and/or offers for sale in California airline uniforms treated
2 with formaldehyde (gas).

3 12. Defendant PHV CORP. is a business entity with 10 or more employees doing busi-
4 ness within the scope of Proposition 65. PHV CORP. distributes, sells, and/or offers for sale in
5 California airline uniforms treated with formaldehyde (gas).

6 13. Each of defendants DOES 1-50 is a person in the course of doing business within the
7 meaning of Health & Safety Code sections 25249.6 and 25249.11, subdivision (b), which manufac-
8 tures, distributes, sells, and/or offers for sale in California airline uniforms treated with formalde-
9 hyde (gas). At this time, the true names and capacities of defendants DOES 1 through 50 are
10 unknown to plaintiffs, who, therefore, sue said defendants by their fictitious names pursuant to
11 Code of Civil Procedure section 474. Plaintiffs are informed and believe, and on that basis allege,
12 that each of the fictitiously named defendants is responsible for the acts and occurrences alleged
13 herein. Plaintiffs will amend this complaint and include these Doe defendants' true names and ca-
14 pacities when they are ascertained.

15 14. TWIN HILL ACQUISITION COMPANY, INC., ARAMARK UNIFORM &
16 CAREER APPAREL GROUP, INC., TAILORED BRANDS PURCHASING, LLC, PHV CORP.,
17 and DOES 1-50 are collectively referred to herein as "defendants."

18 VENUE AND JURISDICTION

19 15. The court has jurisdiction over this action pursuant to Health & Safety Code section
20 25249.7, subdivision (a), which allows enforcement in any court of competent jurisdiction, and
21 pursuant to California Constitution, article VI, section 10, because this case does not present a
22 cause given by statute to other trial courts.

23 16. This court has jurisdiction over defendants because each of them has sufficient mini-
24 mum contacts in the State of California, and/or otherwise purposefully avails itself of the Califor-
25 nia market.

26 17. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
27 Procedure sections 393 and 395, because this court is a court of competent jurisdiction, because
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1 plaintiffs seek civil penalties against defendants, because one or more instances of wrongful con-
2 duct occurred, and continue to occur, in Alameda County, and/or because defendants conducted,
3 and continue to conduct, business in this county with respect to the products at issue.

4 **NOTICE**

5 18. On March 23, 2018, plaintiffs' sixty-day notice of violation ("NOTICE") was pro-
6 vided to TWIN HILL ACQUISITION COMPANY, ARAMARK UNIFORM & CAREER
7 APPAREL GROUP, INC., TAILORED BRANDS PURCHASING, LLC, and PHV CORP. (the
8 "named defendants"), and to each of those public enforcement agencies to which Proposition 65
9 requires notice be given, with respect to garments containing formaldehyde (gas) ("PRODUCTS").
10 These include, but are not limited to:

11

Identified Brand	Item	Style no.
Twin Hill	Female LS blouse, blue check	460-0191-202
Twin Hill	Serving garment, charcoal	740-0080-204
Twin Hill	Female LS blouse, white	460-0200-202
Van Heusen/Aramark	Women's LS pinpoint white shirt	6172
Eagle/Aramark	Women's LS pinpoint white shirt	6173
Twin Hill	Female pant – slim, dark charcoal	320-0145-202
Twin Hill	Female pant – classic, dark charcoal	320-0144-202

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21 19. The NOTICE stated that use of the PRODUCTS results in exposures to formalde-
22 hyde (gas) without a "clear and reasonable warning," as required by Proposition 65.

23 20. The NOTICE included, *inter alia*, the following information: the name, address, and
24 telephone number of the noticing individual; the name of the alleged violator; the statute violated;
25 the approximate time period during which violations occurred; and descriptions of the violations,
26 including the chemical involved, the routes of toxic exposure, and the specific type of product
27 causing the violations. The named defendants were sent copies of the NOTICE by mail. Addition-
28 ally, the named defendants were each provided with a document titled, "The Safe Drinking Water

1 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Ap-
2 pendix A to title 27 of California Code of Regulations (“CCR”) section 25903.

3 21. Each NOTICE included a certificate of merit executed by plaintiffs’ attorneys stat-
4 ing that the person executing the certificate had consulted with one or more persons with relevant
5 and appropriate experience or expertise who has reviewed the facts, studies, or other data regarding
6 exposure to the listed chemical that is the subject of the notice, and that, based on that information,
7 the person executing the certificate believes that there is a reasonable and meritorious case for this
8 private action. Factual information sufficient to establish the basis of the certificate of merit was
9 attached to the certificate of merit served on the California Attorney General.

10 22. No public prosecutors have commenced or are diligently prosecuting an action
11 against the violations at issue herein, although the notice period provided in Health & Safety Code,
12 section 25249.7 has elapsed.

13 **STATUTORY AND REGULATORY BACKGROUND**

14 23. In 1986, the voters of California overwhelmingly enacted Proposition 65.

15 24. Proposition 65 declares the People’s right to be “informed about exposures to chemi-
16 cals that cause cancer, birth defects, or other reproductive harm.” Health & Safety Code Division
17 20, Chapter 6.6 Note, section I(b). Under Proposition 65:

18 No person in the course of doing business shall knowingly and in-
19 tentiously expose any individual to a chemical known to the state
20 to cause cancer or reproductive toxicity without first giving clear
and reasonable warning to such individual, except as provided in
section 25249.10.

21 (Health & Saf. Code, § 25249.6.)

22 25. Proposition 65 helps to protect California’s drinking water sources from contamina-
23 tion, to allow consumers make informed choices about the products they buy, and to enable per-
24 sons to protect themselves from toxic chemicals.

25 26. Proposition 65 provides that any person who “violates or threatens to violate” the
26 statute may be enjoined in any court of competent jurisdiction. (*Id.* at § 25249.7.) “Threaten to
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1 violate” is defined to mean “to create a condition in which there is a substantial probability that a
2 violation will occur.” (*Id.* at § 25249.11, subd. (e).)

3 27. On January 1, 1988, California identified and listed formaldehyde (gas) as a chemi-
4 cal known to the State of California to cause cancer. Formaldehyde (gas) became subject to Propo-
5 sition 65’s “clear and reasonable warning” requirement one year later on January 1, 1999. (Health
6 & Saf. Code, §§ 25249.8 & 25249.10, subd. (b); 27 CCR, § 27001, subd. (b).)

7 28. An exposure to a chemical in a consumer product is one “which results from a per-
8 son’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a con-
9 sumer good, or any exposure that results from receiving a consumer service.” (27 CCR, § 25602,
10 subd. (b).)

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

13 knowledge of the fact that a discharge of, release of, or exposure
14 to a chemical listed pursuant to Section 25249.8(a) of the Act is
15 occurring. No knowledge that the discharge, release or exposure
is unlawful is required.

16 (27 CCR, § 25102, subd. (n).) This knowledge may be actual or constructive. (See, e.g., Final Sta-
17 ment of Reasons Revised (November 4, 1988) for former 22 CCR, § 12201.)

18 30. Violators of Proposition 65 are liable for civil penalties of up to \$2,500.00 per day
19 per violation, recoverable in a civil action. (Health & Saf. Code, § 25249.7, subd. (b).)

20 31. Private parties are entitled to bring an action in the public interest to enforce the Act
21 under Health & Safety Code section 25249.7, subdivision (d).

22 **FIRST CAUSE OF ACTION**

23 (Violation of Proposition 65 - Against All Defendants)

24 32. Plaintiffs reallege and incorporate each and every allegation contained in the preced-
25 ing paragraphs as though fully set forth herein.

33. Formaldehyde (gas) is present in the PRODUCTS in such a way as to expose individuals in California to formaldehyde (gas), as such exposures are defined by 27 CCR section 25602, subdivision (b).

34. The PRODUCTS distributed, sold, or offered for sale in California require a “clear and reasonable” warning under Proposition 65.

35. Defendants knowingly and intentionally distributed, sold, and offered for sale PRODUCTS in California containing formaldehyde (gas), including because reasonably foreseeable use of the PRODUCTS will result in consumers' exposure to formaldehyde (gas).

36. Defendants failed to provide a “clear and reasonable warning” to individuals in the State of California who were or who would become exposed to formaldehyde (gas) through dermal contact, ingestion, and/or inhalation during the reasonably foreseeable uses of the PRODUCTS.

37. Pursuant to Health & Safety Code section 25249.7, subdivision (b) as a consequence of the above-described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation.

38. As a consequence of the above-described acts, Health & Safety Code section 25249.7, subdivision (a) also specifically authorizes the court to grant injunctive relief against Defendants.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that the court:

A. Grant civil penalties pursuant to Health & Safety Code section 25249.7, subdivision (b)(1) against defendants in the amount of \$2,500 per day for each violation;

B. Enter such injunctions or other orders as are necessary pursuant to Health & Safety Code section 25249.7, subdivision (a) to prevent defendants from exposing persons within the State of California to the carcinogen formaldehyde (gas) caused by the reasonably foreseeable use of their PRODUCTS workplace without providing clear and reasonable warnings;

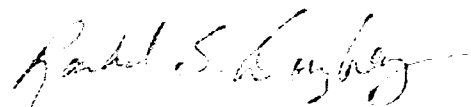
C. Award plaintiff reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and as otherwise appropriate and costs; and

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D. Grant such other and further relief as may be just and proper.

Dated: June 29, 2018

RESPECTFULLY SUBMITTED



Rachel S. Doughty