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ENDORSED
FILED
ALAMEDA COUNTY

JUN 19 2019

CLERK OF THE SUPERIOR COURT
By *Janie Thomas*
JANIE THOMAS, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Case No.: **RG19023573**

PRECILA BALABBO,

Plaintiff,

vs.

LIKE DREAMS, INC., ROSS STORES,
INC.,

Defendant.

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

(Violation of Health & Safety Code § 25249.5 et
seq.)

Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following
cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

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

2. This complaint is a representative action brought by Plaintiff in the public interest
of the citizens of the State of California to enforce the People's right to be informed of the health
hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in Like

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1 Dreams totes/bags/cases/pouches sold and/or distributed by defendants Like Dreams, Inc. ("Like
2 Dreams") and Ross Stores, Inc. ("Ross Stores") (collectively, "Defendants") in California.

3 3. DINP is a harmful chemical known to the State of California to cause cancer. On
4 December 20, 2013, the State of California listed DINP as a chemical known to the State to
5 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
6 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On

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

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

17 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in
18 California, without a requisite exposure warning, Like Dreams totes/bags/cases/pouches (the
19 "Products") that expose persons to DINP.

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

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

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

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety
2 Code § 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. She brings
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. Defendant Like Dreams, through its business, effectively manufactures, imports,
9 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
10 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale
11 or use in the State of California. Plaintiff alleges that defendant Like Dreams is a “person” in the
12 course of doing business within the meaning of Health & Safety Code sections 25249.6 and
13 25249.11.

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

19 **VENUE AND JURISDICTION**

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

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

1 15. This Court has jurisdiction over Defendants because each Defendant is either a
2 citizen of the State of California, has sufficient minimum contacts with the State of California, is
3 registered with the California Secretary of State as foreign corporations authorized to do business
4 in the State of California, and/or has otherwise purposefully availed itself of the California
5 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
6 consistent and permissible with traditional notions of fair play and substantial justice.

7 **SATISFACTION OF NOTICE REQUIREMENTS**

8 16. On June 20, 2018, Plaintiff gave notice of alleged violation of Health and Safety
9 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
10 DINP contained in the Products without proper warning, subject to a private action to
11 Defendants and to the California Attorney General's office and the offices of the County District
12 attorneys and City Attorneys for each city with a population greater than 750,000 persons
13 wherein the herein violations allegedly occurred.

14 17. The Notice complied with all procedural requirements of Proposition 65 including
15 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
16 least one person with relevant and appropriate expertise who reviewed relevant data regarding
17 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a
18 private action.

19 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
21 a cause of action against Defendants under Proposition 65 to enforce the alleged violations which
22 are the subject of the Notice.

23 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
24 Notice to Defendants, as required by law.

25 **FIRST CAUSE OF ACTION**

26 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

27 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
28 this complaint as though fully set forth herein.

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

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

5 23. The Product does not comply with the Proposition 65 warning requirements.

6 24. Plaintiff, based on her best information and belief, avers that at all relevant times
7 herein, and at least since June 20, 2018, continuing until the present, that Defendants have
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DINP 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 absorption. Users may be exposed to DINP by
13 dermal absorption through direct skin contact with the Product during routine use when the
14 Product is manipulated with bare hands. If the Product is handled with wet hands or the plastic is
15 wet, aqueous HMWP skin permeation rates have been reported to be faster than neat HMWP
16 permeation. Concentrations of gas phase DINP can be expected to build within the enclosed
17 interior of the Product. This gas phase DINP can potentially be absorbed to the surface of the
18 interior contents that are subsequently handled, worn, mouthed or ingested by the user. If the
19 Product is stored or transported in a carrier, DINP that leaches from the item may contaminate
20 other articles contained within these closed spaces that are subsequently handled, worn,
21 mouthed, or ingested by the user. Finally, while mouthing of the Product does not seem likely,
22 some amount of exposure through ingestion can occur by touching the Product with subsequent
23 touching of the user's hand to mouth.

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

27 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
28 Product exposes individuals to DINP, and Defendants intend that exposures to DINP will occur

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
2 sale and offering of the Products to consumers in California

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

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

7 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
8 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
11 following relief:

- 12 A. That the court assess civil penalties against each Defendant in the amount
13 of \$2,500 per day for each violation in accordance with Health and Safety
14 Code § 25249.7(b);
- 15 B. That the court preliminarily and permanently enjoin Defendants
16 mandating Proposition 65 compliant warnings on the Product;
- 17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 18 D. That the court grant any further relief as may be just and proper.

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20 Dated: June 19, 2019

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