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**ENDORSED**

**FILED**

**JAN 16 2019**

**MARGARET J. DOWNE**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

PRECILA BALABBO & EMA BELL,

Plaintiffs,

vs.

MAKEUP ERASER GROUP, LLC,

Defendant.

Case No.:

**RG19002933**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

Plaintiffs Precila Balabbo (“Balabbo”) and Ema Bell (“Bell”, collectively with Balabbo, “Plaintiffs”), by and through their attorneys, allege the following cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

1. Plaintiffs 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 Plaintiffs 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 di(2-ethylhexyl) phthalate (DEHP), a toxic chemical

1 found in MakeUp Eraser travel cases/bags/totes sold and/or distributed by defendant MakeUp  
2 Eraser Group, LLC (“MakeUp Eraser” or “Defendant”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
4 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
5 known to the State to cause cancer and it 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). On October 24, 2003, the State of California listed DEHP as a chemical  
8 known to cause reproductive toxicity.

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

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

19 6. Plaintiffs allege that Defendant manufactures, distributes and/or offers for sale in  
20 California, without a requisite exposure warning, MakeUp Eraser travel cases/bags/totes (the  
21 “Products”) that expose persons to DEHP.

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

26 8. Plaintiffs seek civil penalties against Defendant for its violations of Proposition  
27 65 in accordance with Health and Safety Code § 25249.7(b).

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1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
3 this Court has jurisdiction over this lawsuit.

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

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 16. On October 25, 2018 (Bell), and November 5, 2018 (Balabbo), Plaintiffs gave  
12 notice of alleged violation of Health and Safety Code § 25249.6 (the “Notices”) to Defendant  
13 concerning the exposure of California citizens to DEHP contained in the Products without proper  
14 warning, subject to a private action to Defendant and to the California Attorney General’s office  
15 and the offices of the County District attorneys and City Attorneys for each city with a  
16 population greater than 750,000 persons wherein the herein violations allegedly occurred.

17 17. The Notices complied with all procedural requirements of Proposition 65  
18 including the attachment of a Certificate of Merit affirming that Plaintiffs’ counsel had consulted  
19 with at least one person with relevant and appropriate expertise who reviewed relevant data  
20 regarding DEHP exposure, and that counsel believed there was meritorious and reasonable cause  
21 for a private action.

22 18. After receiving the Notices, and to Plaintiffs’ best information and belief, none of  
23 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
24 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which  
25 are the subject of the Notices.

26 19. Plaintiffs are commencing this action more than sixty (60) days from the date of  
27 the Notices to Defendant, as required by law.

28 **FIRST CAUSE OF ACTION**

1                                   **(By Plaintiffs against Defendant for the Violation of Proposition 65)**

2           20.     Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 19 of  
3 this complaint as though fully set forth herein.

4           21.     Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
5 and/or retailer of the Product.

6           22.     The Products contain DEHP, a hazardous chemical found on the Proposition 65  
7 list of chemicals known to be hazardous to human health.

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

9           24.     Plaintiffs, based on their best information and belief, aver that at all relevant times  
10 herein, and at least since September 26, 2018, continuing until the present, that Defendant has  
11 continued to knowingly and intentionally expose California users and consumers of the Product  
12 to DEHP without providing required warnings under Proposition 65.

13           25.     The exposures that are the subject of the Notices result from the purchase,  
14 acquisition, handling and recommended use of the Product. Consequently, the primary route of  
15 exposure to these chemicals is through dermal absorption. Users may be exposed to DEHP by  
16 dermal absorption through direct skin contact with the Product during routine use when the  
17 Product is manipulated with bare hands. If the Product is handled with wet hands or the Product  
18 is wet, aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP  
19 permeation. Concentrations of DEHP can be expected to build within the enclosed interior of the  
20 Product. This DEHP can be absorbed to the surface of the makeup eraser cloth, that is  
21 subsequently handled or used to clean the makeup from the user's face resulting in dermal  
22 exposure DEHP and ingestion of DEHP when used to remove makeup from the lips. If the  
23 Product is stored or transported in a carrier, DEHP that leaches from the item may contaminate  
24 other articles contained within these closed spaces that are subsequently handled, worn,  
25 mouthed, or ingested by the user. Finally, while mouthing of the Product does not seem likely,  
26 some amount of exposure through ingestion can occur by touching the Product with subsequent  
27 touching of the user's hand to mouth.

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