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ENDORSED
FILED
ALAMEDA COUNTY

NOV 1 2019

5 *Attorneys for Plaintiff*

CLERK OF THE SUPERIOR COURT

By Alvin P. Khan Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

Case No.:

RG19U41693

10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

13 WALMART, INC.,

14 Defendant.

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

18 **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 to lead, a toxic chemical found in Armenian ceramic
28

1 plates/kitchenware sold and/or distributed by defendant Walmart, Inc. (“Walmart” or
2 “Defendant”) in California.

3 3. Lead is a harmful chemical known to the State of California to cause cancer and
4 reproductive toxicity. On February 27, 1987, the State of California listed lead as a chemical
5 known to cause adverse developmental and reproductive effects in both males and females and it
6 has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
7 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 1, 1992, the state
8 of California listed lead as a chemical known to cause cancer.

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. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
20 California, without a requisite exposure warning, Armenian ceramic plates/kitchenware (the
21 “Products”) that expose persons to Lead.

22 7. Defendant’s failure to warn consumers and other individuals in California of the
23 health hazards associated with exposure to Lead 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. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
27 65 in accordance with Health and Safety Code § 25249.7(b).
28

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendant to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to Lead pursuant to Health and Safety Code § 25249.7(a).

PARTIES

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

11. Defendant Walmart, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

12. Plaintiff alleges that defendant Walmart is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

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

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

15. This Court has jurisdiction over Defendant because Defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business

1 in the State of California, and/or has otherwise purposefully availed itself of the California
2 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On December 17, 2018, Plaintiff gave notice of alleged violation of Health and
6 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California
7 citizens to Lead contained in the Products without proper warning, subject to a private action to
8 Defendant and to the California Attorney General's office and the offices of the County District
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons
10 wherein the herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

26 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
27 and/or retailer of the Products.

1 22. The Products contain Lead, a hazardous chemical found on the Proposition 65 list
2 of chemicals known to be hazardous to human health.

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

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since December 17, 2018, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Products
7 to Lead without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of the Notice result from the purchase,
9 acquisition, handling and recommended use of the Products. Consequently, the primary route of
10 exposure to these chemicals is through ingestion and/or dermal contact, particularly when
11 consumers, including children, place food or beverages that have come into contact with the
12 Products into their mouths; ingestion via hand to mouth contact after consumers touch or handle
13 the Products; and dermal absorption directly through the skin when consumers touch the
14 Products. Increased duration of contact, microwaving, increased acidity, and increased food
15 temperatures in contact with the Products will result in increased levels of lead transferred into
16 the food. When foods contaminated with lead due to contact with the Products are consumed,
17 lead ingestion will occur which will increase BLLS. People likely to be exposed include
18 children.

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

22 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
23 Product exposes individuals to Lead, and Defendant intends that exposures to Lead will occur by
24 its deliberate, non-accidental participation in the manufacture, importation, distribution, sale and
25 offering of the Products to consumers in California.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant and requests the following relief:

A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);

B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Products;

C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.

D. That the court grant any further relief as may be just and proper.

Dated: November 1, 2019

BRODSKY & SMITH, LLC

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