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CLERK OF THE SUPERIOR COURT
By M. Williams

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

RG 20060793

Case No.:

PRECILA BALABBO,

Plaintiff,

vs.

RAMALLAH TRADING COMPANY,
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 di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Estate

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1 Collection quilts/blankets sold and/or distributed by defendant Ramallah Trading Company, Inc.
2 (“Ramallah Trading” or the “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 known
5 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since
6 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
7 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
8 reproductive toxicity.

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

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
19 25249.7.

20 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
21 without a requisite exposure warning, Estate Collection quilts/blankets (the “Products”) that
22 expose persons to DEHP.

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

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

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 DEHP 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. She brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Ramallah Trading, through its business, effectively 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 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

12. Plaintiff alleges that defendant Ramallah Trading 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 in the State of California, and/or has otherwise purposefully availed itself of the California market. Such

purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

STATUTORY BACKGROUND

16. The people of the State of California declared in Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

17. To effect this goal, Proposition 65 requires that individuals be provided with a “clear and reasonable warning” before being exposed to substances listed by the State of California as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

No 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...

18. An exposure to a chemical in a consumer product is one “which results from a person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ... shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning.”

19. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or more of the following methods individually or in combination:¹

- a. A warning that appears on a product’s label or other labeling;
- b. Identification of the product at the retail outlet in a manner which provides a warning. Identification may be through shelf labeling, signs, menus, or a combination thereof;

¹ Alternatively, a person in the course of doing business may elect to comply with the warning requirements set out in the amended version of 27 CCR 25601, *et.seq.*, as amended on August 30, 2016, and operative on August 30, 2018.

c. The warnings provided pursuant to subparagraphs (a) and (b) shall be prominently placed upon a product's labels or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use; and/or

d. A system of signs, public advertising identifying the system and toll-free information services, or any other system that provides clear and reasonable warnings.

20. Proposition 65 provides that any “person who violates or threatens to violate” the statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase “threaten to violate” is defined to mean creating “a condition in which there is a substantial probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

FACTUAL BACKGROUND

21. On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to cause reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.

22. The consumer exposures that are the subject of this Complaint result from through dermal absorption. Dermal absorption of DEHP can occur through direct skin contact when the Products are contacted with bare hands. Concentrations of DEHP can be expected to build within the interior of the Products. Articles placed in the Products, including but not limited a quilt, can absorb DEHP. A DEHP contaminated quilt can be subsequently handled or placed in direct contact with the user's skin resulting in dermal exposure to DEHP. Finally, while mouthing of the Products does not seem likely, some amount of exposure through ingestion can occur by touching the Products with subsequent touching of the user's hand to mouth.

1 23. Defendant has manufactured, processed, marketed, distributed, offered to sell
2 and/or sold the Products in California since at least September 10, 2019. The Products continue to
3 be distributed and sold in California without the requisite warning information.

4 24. At all times relevant to this action, Defendant has knowingly and intentionally
5 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
6 giving a clear and reasonable exposure warning to such individuals.

7 25. As a proximate result of acts by Defendant, as a person in the course of doing
8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
9 California, including in Alameda County, have been exposed to the Listed Chemical without a
10 clear and reasonable warning on the Products. The individuals subject to the violative exposures
11 include normal and foreseeable users, consumers and patients that use the Products, as well as all
12 others exposed to the Products.

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 26. On September 10, 2019, Plaintiff gave notice of alleged violation of Health and
15 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens
16 to DEHP contained in the Products without proper warning, subject to a private action to Defendant
17 and to the California Attorney General’s office and the offices of the County District attorneys and
18 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
19 violations allegedly occurred.

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

25 28. After receiving the Notice, and to Plaintiff’s best information and belief, none of
26 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
27 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
28 the subject of the Notice.

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

FIRST CAUSE OF ACTION

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

30. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 29 of this complaint as though fully set forth herein.

31. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of the Product.

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

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

34. Plaintiff, based on her best information and belief, avers that at all relevant times herein, and at least since September 10, 2019, continuing until the present, that Defendant has continued to knowingly and intentionally expose California users and consumers of the Product to DEHP without providing required warnings under Proposition 65.

35. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Products. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur through direct skin contact when the Products are contacted with bare hands. Concentrations of DEHP can be expected to build within the interior of the Products. Articles placed in the Products, including but not limited a quilt, can absorb DEHP. A DEHP contaminated quilt can be subsequently handled or placed in direct contact with the user's skin resulting in dermal exposure to DEHP. Finally, while mouthing of the Products does not seem likely, some amount of exposure through ingestion can occur by touching the Products with subsequent touching of the user's hand to mouth.

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

1 37. Defendant has knowledge that the normal and reasonably foreseeable use of the
2 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
3 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
4 the Products to consumers in California

5 38. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
6 Complaint.

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

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

11 **PRAYER FOR RELIEF**

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

14 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
15 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
16 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

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

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

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

21 Dated: March 18, 2020

BRODSKY & SMITH, LLC

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