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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

05/20/2021
Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

CGC-21-592020

Center for Advanced Public Awareness,

Plaintiff,

v.

Prestige Consumer Healthcare, Inc.; C.B. Fleet
Company, Incorporated; and Does 1-30,
inclusive,

Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act of
1986 (Health & Safety Code § 25249.5 *et*
seq.)

Action is an Unlimited Civil Case

1 Plaintiff Center for Advanced Public Awareness (“CAPA”), acting in the public interest,
2 alleges a cause of action against Defendants Prestige Consumer Healthcare, Inc., C.B. Fleet
3 Company, Incorporated, and Does 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. This Complaint is a representative action brought by CAPA in the public interest of
6 the citizens of the State of California to enforce the People’s right to be informed of the health
7 hazards caused by exposures to Lead, a toxic chemical alleged herein to be found in diaper rash
8 ointment manufactured and sold by Defendants to consumers in the State of California.

9 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
10 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
11 (“**consumers**”) they are being exposed to substances known to the State of California to cause birth
12 defects and other reproductive harm through exposures to Lead present in diaper rash ointments
13 manufactured, distributed, marketed, sold and otherwise offered for sale or use throughout the State
14 of California by Defendants and purchased by consumers and other individuals who use, handle, or
15 apply the products to the skin, including skin affected by the conditions diaper rash ointments are
16 designed to prevent and treat, and to the diaper area of infants, toddlers and children.

17 3. Detectable levels of Lead are found in the diaper rash ointments Defendants
18 manufacture, sell or distribute for sale to individuals throughout California.

19 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
20 Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course
21 of doing business to knowingly and intentionally expose consumers in California to chemicals known
22 to the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear
23 and reasonable” health hazard warning to such individuals prior to purchase or use.

24 5. CAPA contends and alleges Defendants manufacture, distribute, sell, and offer for
25 sale, in or into California, diaper rash ointments containing Lead including, but not limited to,
26 *Boudreaux’s Butt Paste Diaper Rash Ointment Skin Protectant (40% Zinc Oxide), GTIN 3 62103*
27 *32302 9*, (collectively referred to hereinafter as the “**PRODUCTS**”), without the compliant health
28 hazard warning regarding the harms associated with exposures to the chemical required under

1 Proposition 65. Defendants’ conduct subjects them to civil penalties for each violation, enjoinder,
2 and preliminary and permanent injunctive relief. Health & Safety Code §§ 25249.7(a) and (b).

3 **PARTIES**

4 6. Plaintiff CAPA is a non-profit organization organized under the laws of California,
5 acting in the interest of the general public, dedicated to protecting the health of California citizens and
6 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
7 consumer products and increasing public awareness of those chemicals through the promotion of
8 sound environmental practices and corporate responsibility. CAPA is a person, within the meaning
9 of Health & Safety Code § 25249.11(a), and brings this action in the public interest pursuant to
10 Health & Safety Code § 25249.7(d).

11 7. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant
12 Prestige Consumer Healthcare, Inc. (“**PRESTIGE**”) was and is a person in the course of doing
13 business, with ten (10) or more employees, within the meaning of Health & Safety Code §§ 25249.6
14 and 25249.11.

15 8. PRESTIGE manufactures, distributes, sells, and/or offers the PRODUCTS for sale or
16 use in the State of California, or implies by its conduct it manufactures, distributes, sells, and/or
17 offers the PRODUCTS for sale or use in the State of California.

18 9. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Defendant
19 C.B. Fleet Company, Incorporated (“**C.B. FLEET**”) was and is a person in the course of doing
20 business, with ten (10) or more employees, within the meaning of Health & Safety Code §§ 25249.6
21 and 25249.11.

22 10. C.B. FLEET manufactures, imports, distributes, sells, and/or offers the PRODUCTS
23 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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1 11. Defendants Does 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person in
2 the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.
3 **MANUFACTURER DEFENDANTS**, and each of them, assemble, fabricate, and manufacture, or
4 imply by their conduct they do so, one or more of the **PRODUCTS** offered for sale or use in
5 California.

6 12. Defendants Does 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
7 the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.
8 **DISTRIBUTOR DEFENDANTS**, and each of them, distribute, transfer, and transport, or imply by
9 their conduct they do so, one or more of the **PRODUCTS** to individuals, businesses, or retailers for
10 sale or use in the State of California.

11 13. Defendants Does 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
12 course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.
13 **RETAILER DEFENDANTS**, and each of them, offer the **PRODUCTS** for sale to individuals in the
14 State of California.

15 14. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
16 unknown to plaintiff, who, therefore, sues said **DEFENDANTS** by their fictitious names, pursuant to
17 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of
18 the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged
19 herein and the damages caused thereby. When ascertained, their true names and capacities shall be
20 reflected in an amended complaint.

21 15. At all times mentioned herein, **PRESTIGE, C.B. FLEET, MANUFACTURER**
22 **DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS** shall,
23 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

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1 **JURISDICTION AND VENUE**

2 16. This Court has jurisdiction over this action pursuant to Health & Safety Code
3 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
4 Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
5 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
6 other trial courts.” The statute under which this action is brought does not specify any other basis of
7 subject matter jurisdiction.

8 17. The California Superior Court has jurisdiction over DEFENDANTS based on
9 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or
10 association that is a citizen of the State of California, does sufficient business in California, have
11 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
12 themselves of the California market through their manufacture, importation, distribution, promotion,
13 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders
14 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
15 play and substantial justice.

16 18. Venue is proper in the Superior Court for the County of San Francisco pursuant to
17 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
18 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
19 instances of wrongful conduct occurred, and continue to occur, in this city and county, and/or because
20 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
21 respect to the PRODUCTS that are the subject of this action.

22 **REGULATORY BACKGROUND AND LAW**

23 19. In 1986, the people of the State of California approved an initiative addressing
24 concerns regarding the harms caused by hazardous chemicals and declaring their right “[t]o be
25 informed about exposures the chemicals that cause cancer, birth defects, or other reproductive harm.”
26 Ballot Pamp., Proposed General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

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1 “clear and reasonable” warning, based on consumers utilizing the PRODUCTS in accordance with
2 their reasonably foreseeable use, including by touching, handling or applying the PRODUCTS to the
3 skin, including skin affected by the conditions the PRODUCTS are designed to prevent and treat, and
4 to the diaper area of infants and toddlers.

5 28. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
6 there was a reasonable and meritorious case for this private action, and included the factual
7 information supporting the certificate served on the California Attorney General’s Office, as required.
8 Health & Safety Code § 25249.7(d); Title 11 CCR § 3102.

9 29. Thereafter, on September 9, 2020, plaintiff served a 60-Day Notice of Violation
10 (“**Notice**”), together with the requisite certificate of merit, on PRESTIGE, C.B. FLEET,, the
11 California Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a
12 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were and
13 are being exposed to Lead resulting from their reasonably foreseeable use of the PRODUCTS without
14 first receiving a “clear and reasonable warning,” as required by Proposition 65.

15 30. After receiving plaintiff’s Notice, no public enforcement agency has commenced and
16 is diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the
17 alleged violations that are the subject of the Notice.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65 - Against All DEFENDANTS)**

20 31. CAPA realleges and incorporates by reference, as if fully stated herein, the allegations
21 set forth in Paragraphs 1 through 30, inclusive.

22 32. DEFENDANTS’ PRODUCTS contain Lead in levels requiring a “clear and
23 reasonable” warning under Proposition 65.

24 33. DEFENDANTS knew or should have known the PRODUCTS they manufacture,
25 distribute, sell, and offer for sale in California contain Lead.

26 34. The PRODUCTS DEFENDANTS manufacture, distribute, sell, and offer for sale or
27 use in California cause exposures to Lead, as a result of the reasonably foreseeable use of the
28 PRODUCTS, through dermal contact and/or ingestion.

1 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, exposures to Lead.

3 36. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
4 exposes individuals to Lead through dermal contact and/or ingestion.

5 37. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the
6 PRODUCTS will occur by their deliberate, non-accidental participation in the California
7 marketplace.

8 38. The exposures to Lead, caused by DEFENDANTS and endured by consumers and
9 other individuals in California, are not exempt from the “clear and reasonable” warning requirements
10 of Proposition 65.

11 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
12 and other individuals in California who have been, or will be, and whose children have been, or will
13 be, exposed to Lead through dermal contact and/or ingestion resulting from their use of the
14 PRODUCTS.

15 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
16 directly by California voters, consumers and other individuals exposed to Lead through dermal
17 contact and/or ingestion as a result of their use of the PRODUCTS DEFENDANTS sold without a
18 “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
19 for which they have no plain, speedy, or adequate remedy at law.

20 41. DEFENDANTS manufacture, distribute, sell, and offer the PRODUCTS for sale or
21 use in violation of Health & Safety Code § 25249.6, and DEFENDANTS’ violations have continued
22 beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are ongoing and
23 continuous in nature and, unless enjoined, will continue in the future.

24 42. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-
25 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
26 per day for each violation.

27 43. As a consequence of the above-described acts, Health & Safety Code § 25249.7(a)
28 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

1 **PRAYER FOR RELIEF**

2 Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them,
3 as follows:

4 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
5 permanently enjoin DEFENDANTS from manufacturing, distributing, marketing or otherwise
6 offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable
7 warning” regarding the harms associated with exposures to Lead or reformulating the PRODUCTS to
8 remove Lead;

9 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), issue preliminary and
10 permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of
11 commerce in California without a “clear and reasonable warning”;

12 3. That the Court, assess civil penalties against DEFENDANTS, and each of them, in the
13 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

14 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
15 herein; and

16 5. That the Court grant any further relief as the Court may deem just and equitable.

17 Dated: May 19, 2021

Respectfully submitted,

18 SEVEN HILLS LLP

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20 By: 

Laralei S. Paras
Attorneys for Plaintiff
Center for Advanced Public Awareness

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