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County of San Francisco

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

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

THE HAIN CELESTIAL GROUP, INC.; 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.)

UNLIMITED CIVIL

1 Plaintiff Center for Advanced Public Awareness (“CAPA”), acting in the public interest, alleges
2 a cause of action against Defendants The Hain Celestial Group, Inc. and Does 1-30.

3 INTRODUCTION AND NATURE OF THE ACTION

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

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

16 3. Lead is found in the diaper rash ointments Defendants manufacture, sell, or distribute for
17 sale to individuals throughout California.

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

23 5. CAPA contends and alleges Defendants manufacture, distribute, import, sell, and offer
24 for sale, in and into California, diaper rash ointments containing Lead including, but not limited to, *live*
25 *clean (baby) gentle moisture DIAPER RASH CREAM with lavender, aloe & chamomile, UPC 0 65743*
26 *32566 7* (collectively referred to hereinafter as the “**PRODUCTS**”). Defendants’ conduct subjects
27 them to civil penalties for each violation, enjoinder as well as preliminary and permanent injunctive
28 relief. Health & Safety Code § 25249.7(a) and (b).

PARTIES

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

7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant THE HAIN CELESTIAL GROUP, INC. (“**HAIN CELESTIAL**”) was and is a “person” “in the course of doing business” with ten (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

8. HAIN CELESTIAL manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in California.

9. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS offered for sale or use in California.

10. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in California.

11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS

1 for sale to individuals in California.

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

8 13. At all times mentioned herein, HAIN CELESTIAL, MANUFACTURER
9 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter,
10 where appropriate, be referred to collectively as the “**DEFENDANTS.**”

11 **JURISDICTION AND VENUE**

12 14. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
13 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior Court
14 has jurisdiction over this action, pursuant to California Constitution Article VI, section 10, which grants
15 the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.”
16 The statute under which this action is brought does not specify any other basis of subject matter
17 jurisdiction.

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

25 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code
26 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
27 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
28 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS

1 conducted, and continue to conduct, business in the County of San Francisco with respect to the
2 PRODUCTS that are the subject of this action.

3 **REGULATORY BACKGROUND AND LAW**

4 17. In 1986, the people of California approved an initiative addressing the harms caused by
5 hazardous chemicals and declared their right “[t]o be informed about exposures to chemicals that cause
6 cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed General Law, Gen, Elec.
7 (Nov. 4, 1986) at p.3.

8 18. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
9 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o person
10 in the course of doing business shall knowingly and intentionally expose any individual to a chemical
11 known to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to
12 such individual...”

13 19. Under the Act, a “person in the course of doing business” is defined as a business with
14 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
15 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.
16 Health & Safety Code § 25249.6.

17 20. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
18 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
19 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s
20 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
21 27 C.C.R. § 25600(h).

22 21. Under Proposition 65, persons violating the statute may be enjoined in any court of
23 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
24 Health & Safety Code § 25249.7.

25 22. On February 27, 1987, pursuant to Proposition 65’s implementing regulations,
26 California identified and listed Lead as a chemical known to cause birth defects and reproductive harm.
27 Lead became subject to the “clear and reasonable warning” requirements one year later, on February
28 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

1 **STATEMENT OF FACTS**

2 23. Plaintiff purchased the PRODUCTS, without a “clear and reasonable” warning, in
3 California.

4 24. Plaintiff tested DEFENDANTS’ PRODUCTS at an accredited lab.

5 25. After consultation with a person with relevant and appropriate expertise who reviewed
6 collected data and analyzed the risk of exposures to Lead, determined the PRODUCTS expose
7 consumers, including infants and toddlers, in California the listed chemical at levels requiring a “clear
8 and reasonable” warning, based on consumers utilizing the PRODUCTS in accordance with their
9 reasonably foreseeable use, including by touching, handling, or applying the PRODUCTS to the skin,
10 including the skin affected by conditions the PRODUCTS are designed to prevent and treat, and to the
11 diaper areas of infants and toddlers.

12 26. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
13 there was a reasonable and meritorious case for this private action and included the factual information
14 supporting the certificate when it served the notice on the California Attorney General’s Office, as
15 required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

16 27. Thereafter, on September 23, 2020, plaintiff served a 60-Day Notice of Violation
17 (“**Notice**”), together with the certificate of merit, on HAIN CELESTIAL, the California Attorney
18 General’s Office, and the requisite public enforcement agencies, alleging, as a result of
19 DEFENDANTS’ sales of the PRODUCTS, consumers in California were, and are, being exposed to
20 Lead resulting from their reasonably foreseeable use of the PRODUCTS without first receiving a “clear
21 and reasonable warning,” as required by Proposition 65.

22 28. After receiving plaintiff’s Notice, no public enforcement agency has commenced and is
23 diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce the
24 alleged violations that are the subject of the Notice.

25 **FIRST CAUSE OF ACTION**

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

27 29. CAPA realleges and incorporates by reference, as if fully stated herein, the allegations
28 set forth in Paragraphs 1 through 28, inclusive.

1 30. DEFENDANTS' PRODUCTS contain Lead in levels requiring a "clear and reasonable"
2 warning under Proposition 65.

3 31. DEFENDANTS knew or should have known the PRODUCTS they manufacture,
4 import, distribute, sell, and offer for sale in California contain Lead.

5 32. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
6 sale in or into California cause exposures to Lead, as a result of the reasonably foreseeable use of the
7 PRODUCTS, through dermal contact and/or ingestion.

8 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
9 continues to cause, exposures to Lead.

10 34. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
11 exposes individuals to Lead through dermal contact and/or ingestion.

12 35. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the
13 PRODUCTS will occur by their deliberate, non-accidental participation in the California marketplace.

14 36. The exposures to Lead, caused by DEFENDANTS and endured by consumers and other
15 individuals in California, are not exempt from the "clear and reasonable" warning requirements of
16 Proposition 65.

17 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
18 and other individuals in California who have been, or who will be, exposed to Lead through dermal
19 contact and/or ingestion resulting from their use of the PRODUCTS.

20 38. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
21 and other individuals, exposed to Lead through dermal contact and/or ingestion as a result of their use
22 of the PRODUCTS DEFENDANTS sold without a "clear and reasonable" health hazard warning, have
23 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate
24 remedy at law.

25 39. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale
26 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
27 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are ongoing
28 and continuous in nature and, unless enjoined, will continue in the future.

