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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**10/28/2021**  
Clerk of the Court  
BY: KAREN VALDES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 BOOTS RETAIL USA, INC., TARGET  
CORPORATION,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

**CGC-21-596197**

15 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause  
16 of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to  
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
20 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,  
21 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
23 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People’s right to be informed of the health  
26 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in Soap & Glory  
27 mascara (the “Products”) distributed, sold and/or offered for sale in California by defendants Boots  
28 Retail USA, Inc. (“Boots Retail”) and Target Corporation (“Target”) (collectively, “Defendants”).

1           3.       DEA is a harmful chemical known to the State of California to cause cancer. On  
2 June 22, 2012, the State of California listed DEA as a chemical known to the State to cause cancer  
3 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.  
4 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

5           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
6 within California or sell products therein to comply with Proposition 65 regulations. Included in  
7 such regulations is the requirement that businesses must label any product containing a Proposition  
8 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”  
9 exposing any person to any such listed chemical.

10          5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
11 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
12 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
13 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
14 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
15 25249.7.

16          6.       Plaintiff alleges that Defendants distribute, sell and/or offer for sale in California,  
17 without a requisite exposure warning, the Products that expose persons to DEA when used for their  
18 intended purpose.

19          7.       Defendants’ failure to warn consumers and other individuals in California of the  
20 health hazards associated with exposure to DEA in conjunction with the sale and/or distribution  
21 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil  
22 penalties described herein.

23          8.       Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
24 65 in accordance with Health and Safety Code § 25249.7(b).

25          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
26 Defendants to provide purchasers or users of the Products with required warnings related to the  
27 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code  
28 § 25249.7(a).

1 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

2 **PARTIES**

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

7 12. Defendant Boots Retail, through its business, effectively imports, distributes, sells,  
8 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
9 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
10 Plaintiff alleges that defendant Boots Retail is a “person” in the course of doing business within  
11 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

12 13. Defendant Target, through its business, effectively imports, distributes, sells, and/or  
13 offers the Products for sale or use in the State of California, or it implies by its conduct that it  
14 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
15 Plaintiff alleges that defendant Target is a “person” in the course of doing business within the  
16 meaning of Health & Safety Code sections 25249.6 and 25249.11.

17 **VENUE AND JURISDICTION**

18 14. Venue is proper in the County of San Francisco because one or more of the  
19 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
20 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
21 respect to the Products.

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

27 16. This Court has jurisdiction over Defendants because each defendant is either a  
28 citizen of the State of California, has sufficient minimum contacts with the State of California, is

1 registered with the California Secretary of State as foreign corporations authorized to do business  
2 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
4 and permissible with traditional notions of fair play and substantial justice.

5 **STATUTORY BACKGROUND**

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

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

12 No person in the course of doing business shall knowingly and intentionally expose any  
13 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
14 first giving clear and reasonable warning to such individual...

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

21 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
22 more of the following methods individually or in combination:<sup>1</sup>

23 a. A warning that appears on a product’s label or other labeling.  
24  
25  
26

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27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 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.







1 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
2 Products to consumers in California

3 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
4 Complaint.

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

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

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
12 relief:

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

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

18 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
19 amount of \$50,000.00.

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

21 Dated: October 28, 2021

BRODSKY & SMITH

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