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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

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Clerk of the Court
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Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-22-597530

9 ANTHONY FERREIRO,

10 Plaintiff,

11 vs.

12 STARSKIN USA, INC. & MACY'S,
13 INC.,

14 Defendants.

Case No.:

**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 following
16 cause 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 di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
27 Starskin ID tag sold and/or distributed by defendant Starskin USA, Inc. ("Starskin") and/or
28 defendant Macy's Inc. ("Macy's") (collectively, "Defendants") in California.

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

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

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

19 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
20 without a requisite exposure warning, Starskin ID tag (the “Products”) that expose persons to
21 DEHP when used for their intended purpose.

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

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

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

3 16. This Court has jurisdiction over Defendants because each defendant is either a
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is
5 registered with the California Secretary of State as foreign corporations authorized to do business
6 in the State of California, and/or has otherwise purposefully availed itself of the California market.
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
8 and permissible with traditional notions of fair play and substantial justice.

9 **STATUTORY BACKGROUND**

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

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

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

19 19. An exposure to a chemical in a consumer product is one “which results from a
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
23 shall provide a warning to any person to whom the product is sold or transferred unless the product
24 is packaged or labeled with a clear and reasonable warning.”

1 reproductive toxicity. In summary, DEHP was listed under Proposition 65 as a chemical known to
2 the State to cause cancer and reproductive toxicity.

3 23. The consumer exposures that are the subject of this Complaint result from dermal
4 absorption. The primary route of exposure to DEHP is through dermal absorption directly through
5 the skin when consumers use, touch, or handle the Products. Some amount of exposure through
6 ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth.
7 No clear and reasonable warning is provided with the Products regarding the health hazards of
8 exposure to the DEHP.

9 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
10 and/or sold the Products in California since at least January 11, 2021. The Products continue to be
11 distributed and sold in California without the requisite warning information.

12 25. At all times relevant to this action, Defendants have knowingly and intentionally
13 exposed users and/or consumers of the Products to DEHP without first giving a clear and
14 reasonable exposure warning to such individuals.

15 26. As a proximate result of acts by each defendant, as a person in the course of doing
16 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
17 California, including in San Francisco County, have been exposed to DEHP without a clear and
18 reasonable warning on the Products. The individuals subject to the violative exposures include
19 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
20 the Products.

21 **SATISFACTION OF NOTICE REQUIREMENTS**

22 27. Plaintiff purchased the Product from Macy's. At the time of purchase Macy's and
23 Starskin did not provide a Proposition 65 exposure warning for DEHP or any other Proposition 65
24 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

25 28. The Product was sent to a testing laboratory to determine the concentration of
26 DEHP present on the surface of the Product.

1 29. The laboratory provided the results of its analysis. Surface DEHP was collected
2 using a phthalate test. Results of this test concluded the presence of DEHP at the surface of the
3 product (the “Chemical Test Report”).

4 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
5 to determine if, based on the findings of the Chemical Test Report and the reasonable and
6 foreseeable use of the Product, exposure to DEHP will occur at levels that require Proposition 65
7 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
8 Code of Regulations.

9 31. Plaintiff received from the analytical chemist an exposure assessment report which
10 concluded that persons in California who use the Products will be exposed to levels of DEHP that
11 require a Proposition 65 exposure warning.

12 32. On January 11, 2021, Plaintiff gave notice of alleged violation of Health and Safety
13 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
14 DEHP from use of the Products without proper warning, subject to a private action to Defendants
15 and to the California Attorney General’s office and the offices of the County District attorneys and
16 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
17 violations allegedly occurred.

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

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

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

FIRST CAUSE OF ACTION

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

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

37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer of the Products.

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

39. The Product does not comply with the Proposition 65 warning requirements.

40. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since January 11, 2021, continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Product to DEHP without providing required warnings under Proposition 65.

41. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Products. The primary route of exposure to DEHP is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the DEHP.

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

43. Defendants have knowledge that the normal and reasonably foreseeable use of the Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur by its deliberate, non-accidental participation in the importation, distribution, sale and offering of the Products to consumers in California

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

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
7 relief:

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

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

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

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

16 Dated: January 10, 2022

BRODSKY & SMITH

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