

Laralei Paras, State Bar No. 203319
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillsllp.com

Attorneys for Plaintiff
CENTER FOR ADVANCED PUBLIC AWARENESS

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

04/02/2021
Clerk of the Court
BY: JACKIE LAPREVOTTE
Deputy Clerk

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

CGC-21-590800

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

REDMOND TRADING COMPANY, L.C.; 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 Redmond Trading Company, L.C. (“REDMOND”),
3 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 baby powder
8 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 baby powders produced,
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 baby powders are designed to
16 prevent and treat, and to the diaper area of infants, toddlers and children.

17 3. Detectable levels of Lead are found in the baby powders Defendants produce,
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.

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5. CAPA contends and alleges Defendants produce, manufacture, distribute, sell, and offer for sale, in or into California, baby powder containing Lead including, but not limited to, *Amazingly Natural Baby Powder, GTIN 0 18788 20332 2*, (collectively referred to hereinafter as the “**PRODUCTS**”), without the compliant health hazard warning regarding the harms associated with exposures to the chemical required under Proposition 65. Defendants’ conduct subjects them to civil penalties for each violation, enjoinder, and preliminary and permanent injunctive relief. Health & Safety Code §§ 25249.7(a) and (b).

PARTIES

6. Plaintiff CAPA is a non-profit organization organized under the laws of California, 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 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 brings this action in the public interest pursuant to Health & Safety Code § 25249.7(d).

7. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant REDMOND TRADING COMPANY, L.C. was and is a person in the course of doing business, with ten (10) or more employees, within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

15 **REGULATORY BACKGROUND AND LAW**

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

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

25 19. Under the Act, a "person the course of doing business" is defined as a business with
26 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
27 exposing individuals to hazardous chemicals without first giving a "clear and reasonable" health
28 hazard warning. Health & Safety Code § 25249.6

20. Exposing individuals to hazardous chemicals means to cause individuals to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR § 25102(i). A consumer product exposure to a hazardous chemical is an exposure that “results from a person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...” 27 CCR § 25600.1(e).

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

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

STATEMENT OF FACTS

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

24. Plaintiff tested DEFENDANTS' PRODUCTS at an accredited lab.

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

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

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All DEFENDANTS)

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

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

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

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

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

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

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

1 36. The exposures to Lead, caused by DEFENDANTS and endured by consumers and
2 other individuals in California, are not exempt from the “clear and reasonable” warning requirements
3 of Proposition 65.

4 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
5 and other individuals in California who have been, or will be, and whose children have been, or will
6 be, exposed to Lead through dermal contact, inhalation and/or ingestion resulting from their use of
7 the PRODUCTS.

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

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

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

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

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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 producing, manufacturing, distributing, marketing or
6 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
7 reasonable warning” regarding the harms associated with exposures to Lead or reformulating the
8 PRODUCTS to 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: March 26, 2021

Respectfully submitted,

18 SEVEN HILLS LLP

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20 By: 

Laralei S. Paras

Attorneys for Plaintiff

Center for Advanced Public Awareness