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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

06/30/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 SHALOM INTERNATIONAL CORP.,
15 THE TJX COMPANIES, INC.,

16 Defendants.

Case No.:

CGC-22-600485

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to Diethanolamine (DEA), a toxic chemical found in Jack Nickalous
hand cream sold and/or distributed by defendant Shalom International Corp. (“Shalom”) and/or
defendant The TJX Companies, Inc. (“TJX”) (collectively, “Defendants”) in California.

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 that will create an exposure above safe harbor levels with a “clear and
9 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
10 chemical.

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

16 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
17 without a requisite exposure warning, Jack Nickalous hand cream (the “Products”) that expose
18 persons to DEA when used for their 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 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:¹

- 23 a. A warning that appears on a product’s label or other labeling.

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27 ¹ 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 DEA from use of the Products without proper warning, subject to a private action to Defendants
2 and to the California Attorney General's office and the offices of the County District attorneys and
3 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
4 violations allegedly occurred.

5 33. The Notice complied with all procedural requirements of Proposition 65 including
6 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
7 least one person with relevant and appropriate expertise who reviewed relevant data regarding
8 DEA exposure, and that counsel believed there was meritorious and reasonable cause for a private
9 action.

10 34. After receiving the Notice, and to Plaintiff's best information and belief, none of
11 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
12 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
13 are the subject of the Notice.

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

16 **FIRST CAUSE OF ACTION**

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

18 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
19 this Complaint as though fully set forth herein.

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

22 38. Use of the Products will expose users and consumers thereof to DEA, a hazardous
23 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

24 39. The Products do not comply with the Proposition 65 warning requirements.

25 40. Plaintiff, based on her best information and belief, avers that at all relevant times
26 herein, and at least since July 21, 2021, continuing until the present, that Defendants have
27 continued to knowingly and intentionally expose California users and consumers of the Products
28 to DEA without providing required warnings under Proposition 65.

1 41. The exposures that are the subject of the Notice result from the purchase,
2 acquisition, handling and recommended use of the Products. The primary route of exposure to the
3 DEA is through dermal exposure. Exposure through ingestion will occur by touching the Product
4 with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
5 with the Products regarding the health hazards of exposure to DEA.

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

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

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

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

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
3 relief:

4 A. That the court assess civil penalties against each defendant in the amount of \$2,500
5 per day for each violation for up to 365 days in accordance with Health and Safety Code §
6 25249.7(b);

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

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

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

12 Dated: June 30, 2022

BRODSKY & SMITH

13 By:  _____

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