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

**07/21/2022**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

9 PRECILA BALABBO,

10 Plaintiff,

11 vs.

12 BLUE CROSS LABORATORIES, LLC,  
13 DOLLAR KINGS, INC.,

14 Defendants.

Case No.:

**CGC-22-600849**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

15 Plaintiff Precila Balabbo (“Plaintiff”), by and through her 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 without first giving clear and reasonable  
23 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 Xcess gel sold  
27 and/or distributed by defendant Blue Cross Laboratories, LLC (“Blue Cross”) and/or defendant  
28 Dollar Kings, Inc. (“Dollar Kings”) (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, Xcess gel (the “Products”) that expose persons to DEA when  
18 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 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 Blue Cross, 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 Blue Cross is a “person” in the course of doing business within the  
11 meaning of Health & Safety Code sections 25249.6 and 25249.11.

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

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26  
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 24. Defendants have manufactured, processed, marketed, distributed, offered to sell  
2 and/or sold the Products in California since at least August 27, 2021. The Products continue to be  
3 distributed and sold in California without the requisite warning information.

4 25. At all times relevant to this action, Defendants have knowingly and intentionally  
5 exposed users of the Products to DEA without first giving a clear and reasonable exposure warning  
6 to such individuals.

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

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 27. On July 12, 2021, Plaintiff purchased the Product from Dollar Kings. At the time  
15 of purchase, Dollar Kings and Blue Cross did not provide a Proposition 65 exposure warning for  
16 DEA or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1  
17 as described *supra*.

18 28. On or about August 9, 2021, the Product was sent to a testing laboratory for testing  
19 to determine the chemical content of the Product.

20 29. On August 16, 2021, the laboratory provided the results of its analysis. Results of  
21 this test determined the Product exposes users to DEA (the "Chemical Test Report").

22 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
23 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
24 foreseeable use of the Product, exposure to DEA will occur at levels that require Proposition 65  
25 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
26 Code of Regulations.

1 31. On August 27, 2021, Plaintiff received from the analytical chemist an exposure  
2 assessment report which concluded that persons in California who use the Products will be exposed  
3 to levels of DEA that require a Proposition 65 exposure warning.

4 32. On August 27, 2021, Plaintiff gave notice of alleged violation of Health and Safety  
5 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to  
6 DEA from use of the Products without proper warning, subject to a private action to Defendants  
7 and to the California Attorney General's office and the offices of the County District attorneys and  
8 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
9 violations allegedly occurred.

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

22           46.     Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
23 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.  
24  
25  
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28



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: July 21, 2022

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