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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
BY: JEFFREY FLORES
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 SAMSONICO USA, LLC,

15 Defendant.

Case No.:

CGC-22-602151

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
28 Berkshire Auto Cleaning Kits (UPC# 638688007099) and Berkshire Deluxe Auto Emergency Kits

1 (UPC# 638688474693) sold and/or distributed by defendant Samsonico USA, LLC (“Samsonico”
2 or “Defendant”) in California.

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

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

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

20 6. Plaintiff alleges that Defendant distribute and/or offer for sale in California, without
21 a requisite exposure warning, Berkshire Auto Cleaning Kits (UPC# 638688007099) and Berkshire
22 Deluxe Auto Emergency Kits (UPC# 638688474693) (the “Products”) that expose persons to
23 DEHP when used for their intended purpose.

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

1 8. Plaintiff seeks civil penalties against Defendant for their violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
4 Defendant to provide purchasers or users of the Products with required warnings related to the
5 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code
6 § 25249.7(a).

7 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

8 PARTIES

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

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

18 VENUE AND JURISDICTION

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

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

1 b. Identification of the product at the retail outlet in a manner which provides
2 a warning. Identification may be through shelf labeling, signs, menus, or a combination
3 thereof.

4 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
5 prominently placed upon a product's labels or other labeling or displayed at the retail outlet
6 with such conspicuousness, as compared with other words, statements, designs, or devices
7 in the label, labeling or display as to render it likely to be read and understood by an
8 ordinary individual under customary conditions of purchase or use.

9 d. A system of signs, public advertising identifying the system and toll-free
10 information services, or any other system that provides clear and reasonable warnings.

11 20. Proposition 65 provides that any "person who violates or threatens to violate" the
12 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
13 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
14 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
15 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
16 365 days.

17 **FACTUAL BACKGROUND**

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

23 22. The exposures that are the subject of the Notice result from the purchase,
24 acquisition, handling and recommended use of the Products. The primary route of exposure to the
25 is through dermal absorption directly through the skin when consumers use, touch, or handle the
26 Products. Exposure through ingestion will occur by touching the Products with subsequent
27 touching of the user's hand to mouth. No clear and reasonable warning is provided with the
28 Products regarding the health hazards of exposure.

1 23. Defendant has manufactured, processed, marketed, distributed, offered to sell
2 and/or sold the Products in California since at least January 11, 2022. The Products continue to be
3 distributed and sold in California without the requisite warning information.

4 24. At all times relevant to this action, Defendant has knowingly and intentionally
5 exposed users of the Products to DEHP without first giving a clear and reasonable exposure
6 warning to such individuals.

7 25. As a proximate result of acts by 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 DEHP 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 26. On October 26, 2021, Plaintiff purchased the Products from Dillards. At the time
15 of purchase, Samsonico and Dillards did not provide a Proposition 65 exposure warning for DEHP
16 or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as
17 described *supra*.

18 27. The Products were sent to a testing laboratory for phthalate testing to determine the
19 phthalate content of the Products.

20 28. On January 7, 2022, the laboratory provided the results of its analysis. Results of
21 this test determined the Products expose users to DEHP (the “Chemical Test Report”).

22 29. Plaintiff provided the Chemical Test Report and Products 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 Products, exposure to DEHP 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 38. The Products do not comply with the Proposition 65 warning requirements.

2 39. Plaintiff, based on her best information and belief, avers that at all relevant times
3 herein, and at least since January 11, 2022, continuing until the present, that Defendant has
4 continued to knowingly and intentionally expose California users and consumers of the Products
5 to DEHP without providing required warnings under Proposition 65.

6 40. 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 the
8 is through dermal absorption directly through the skin when consumers use, touch, or handle the
9 Products. Exposure through ingestion will occur by touching the Products with subsequent
10 touching of the user's hand to mouth. No clear and reasonable warning is provided with the
11 Products regarding the health hazards of exposure.

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

15 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
16 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
17 by their deliberate, non-accidental participation in the importation, distribution, sale and offering
18 of the Products to consumers in California

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

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

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

1 **PRAYER FOR RELIEF**

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

4 A. That the court assess civil penalties against defendant in the amount of \$2,500 per
5 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 Defendant 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: October 4, 2022

BRODSKY & SMITH

13 By:  _____

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