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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/24/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-23-605391

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 ROCKOFF RETAIL LTD., ROSS
15 STORES, INC.,

16 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following
18 cause 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 or reproductive toxicity without first
25 giving clear and reasonable 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 lead, a toxic chemical found in Sopranos Mugs, UPC #
5055295319110, sold and/or distributed by defendant Rockoff Retail Ltd. (“Rockoff Retail”)
and/or defendant Ross Stores, Inc. (“Ross”) (collectively, “Defendants”) in California.

1 3. Lead is a harmful chemical known to the State of California to cause cancer and
2 adverse developmental and reproductive effects in both males and females. On October 1, 1992,
3 the state of California listed lead as a chemical known to cause cancer and it has come under the
4 purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health
5 & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State of California listed
6 lead as a chemical known to cause adverse developmental and reproductive effects in both males
7 and females.

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

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
21 without a requisite exposure warning, Sopranos Mugs, UPC # 5055295319110, (the “Products”)
22 that expose persons to lead when used for their intended purpose.

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

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

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 Defendants are either a citizen
4 of the State of California, have sufficient minimum contacts with the State of California, are
5 registered with the California Secretary of State as foreign corporations authorized to do business
6 in the State of California, and/or have otherwise purposefully availed itself of the California
7 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
8 consistent 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 effects in both males and females. In summary, lead was listed under Proposition 65
2 as a chemical known to the State to cause cancer and adverse developmental and reproductive
3 effects in both males and females.

4 23. The exposures that are the subject of the Notice result from the purchase,
5 acquisition, handling, and recommended use of the Products. Consequently, the primary route of
6 exposure to these chemicals is through ingestion and/or dermal contact. Increased duration of
7 contact, microwaving, increased acidity, and increased food temperatures in contact with the
8 glazed food contact surface will result in increased levels of lead transferred into food. When foods
9 contaminated with lead due to contact with the Products are consumed, lead ingestion will occur
10 which will increase BLLs.

11 24. Defendants have processed, marketed, distributed, offered to sell and/or sold the
12 Products in California since at least April 1, 2022. The Products continue to be distributed and sold
13 in California without the requisite warning information.

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

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

23 SATISFACTION OF NOTICE REQUIREMENTS

24 27. Plaintiff purchased the Product from Ross. At the time of purchase, Rockoff Retail
25 and Ross did not provide a Proposition 65 exposure warning for lead or any other Proposition 65
26 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

27 28. The Product was sent to a testing laboratory to determine the concentration of lead
28 present on the surface of the Product.

1 29. The laboratory provided the results of its analysis. Results of this test determined
2 the Product exposes users to lead (the “Chemical Test Report”).

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

8 31. On April 1, 2022, Plaintiff received from the analytical chemist an exposure
9 assessment report which concluded that persons in California who use the Products will be exposed
10 to levels of lead that require a Proposition 65 exposure warning.

11 32. On April 1, 2022, Plaintiff gave notice of alleged violation of Health and Safety
12 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
13 lead contained in the Products without proper warning, subject to a private action to Defendants
14 and to the California Attorney General’s office and the offices of the County District attorneys and
15 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
16 violations allegedly occurred.

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

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

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

1 **FIRST CAUSE OF ACTION**

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

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

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

7 38. Use of the Products will exposed users to lead, a hazardous chemical found on the
8 Proposition 65 list of chemicals known to be hazardous to human health.

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

10 40. Plaintiff, based on her best information and belief, avers that at all relevant times
11 herein, and at least since April 1, 2022, continuing until the present, that Defendants have
12 continued to knowingly and intentionally expose California users and consumers of the Product to
13 lead without providing required warnings under Proposition 65.

14 41. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the Products. Consequently, the primary route of
16 exposure to these chemicals is through ingestion and/or dermal contact. Increased duration of
17 contact, microwaving, increased acidity, and increased food temperatures in contact with the
18 glazed food contact surface will result in increased levels of lead transferred into food. When foods
19 contaminated with lead due to contact with the Products are consumed, lead ingestion will occur
20 which will increase BLLs.

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

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

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

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

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
9 relief:

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

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

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

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

18 Dated: March 24, 2023

BRODSKY & SMITH

19 By:  _____

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