

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY SMITH  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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

**07/07/2023**  
Clerk of the Court  
BY: KAREN VALDES  
Deputy Clerk

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

12 PRECILA BALABBO,

13 Plaintiff,

14 vs.

15 RAWLINGS SPORTING GOODS  
COMPANY, INC., WALMART, INC.,

16 Defendants.

Case No.:

**CGC-23-607496**

**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 against defendants Rawlings Sporting Goods Company,  
28 Inc. (“Rawlings”) and Walmart, Inc. (“Walmart”) (collectively, “Defendants”) to enforce the  
People’s right to be informed of the health hazards caused by exposure to bisphenol A (BPA) from

1 the use of softball fielder's masks, UPC # 083321226557, that are manufactured, distributed,  
2 offered for sale and/or sold by Defendants in California.

3 3. BPA is a harmful chemical known to the State of California to cause birth defects  
4 or other reproductive harm. On May 11, 2015, the State of California listed BPA as a chemical  
5 known to the State to cause birth defects or other reproductive harm and BPA has come under the  
6 purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health  
7 & Safety Code §§ 25249.8 & 25249.10(b).

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 with a "clear and reasonable" warning before "knowingly and intentionally"  
12 exposing any person to any such listed chemical.

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

19 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
20 without a requisite Proposition 65 exposure warning, softball fielder's masks, UPC #  
21 083321226557, (the "Products") that expose persons to BPA when used as intended and/or for  
22 their intended purpose.

23 7. Defendants' failure to warn consumers and other individuals in California of the  
24 health hazards associated with exposure to BPA from use of the Products in conjunction with the  
25 sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to  
26 the enjoinder and civil 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 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
2 Defendants to provide purchasers or users of the Products with required warnings related to the  
3 dangers and health hazards associated with exposure to BPA from use of the Products pursuant to  
4 Health and Safety Code § 25249.7(a).

5 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

6 **PARTIES**

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

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

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

21 **VENUE AND JURISDICTION**

22 14. Venue is proper in the County of San Francisco because one or more of the  
23 instances of wrongful conduct occurred and continues to occur in this county and/or because  
24 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
25 respect to the Products.

26 15. This Court has jurisdiction over this action pursuant to California Constitution  
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement

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 each defendant is either a  
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
5 registered with the California Secretary of State as a foreign corporation authorized to do business  
6 in the State of California and/or has otherwise purposefully availed itself of the California market.  
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
8 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 birth defects or other reproductive harm. H&S Code § 25249.6 states, in  
16 pertinent part:

17 No person in the course of doing business shall knowingly and intentionally expose any  
18 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
19 first giving clear and reasonable warning to such individual...

20 19. An exposure to a chemical in a consumer product is one “which results from a  
21 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
22 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
23 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
24 shall provide a warning to any person to whom the product is sold or transferred unless the product  
25 is packaged or labeled with a clear and reasonable warning.”  
26  
27  
28

1 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
2 more of the following methods individually or in combination:<sup>1</sup>

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

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

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

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

14 21. Proposition 65 provides that any “person who violates or threatens to violate” the  
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
16 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
17 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
19 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

20 **FACTUAL BACKGROUND**

21 22. On May 11, 2015, the State of California listed BPA as a chemical known to the  
22 State to cause birth defects or other reproductive harm and BPA has come under the purview of  
23 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety  
24 Code §§ 25249.8 & 25249.10(b).

25  
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 23. The exposures that are the subject of this complaint result from the purchase,  
2 acquisition, handling and recommended use of the Products. The primary route of exposure to  
3 BPA from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the  
4 user handles the Products, or the Products are placed in contact with exposed areas of the user’s  
5 skin. If the Products are placed in contact with the user’s mouth, ingestion of BPA can occur  
6 resulting in oral exposure to BPA. Additionally, exposure through ingestion will occur by touching  
7 the Products with subsequent touching of the user’s hand to mouth.

8 24. Defendants have distributed, offered to sell and/or sold the Products in California  
9 since at least July 11, 2022. The Products continue to be distributed and sold in California without  
10 a requisite Proposition 65 compliant BPA exposure warning.

11 25. At all times relevant to this action, Defendants have knowingly and intentionally  
12 exposed users, consumers and/or purchasers of the Products to BPA without first providing a clear  
13 and reasonable exposure warning to such individuals.

14 26. As a proximate result of Defendants’ actions, and as persons in the course of doing  
15 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
16 California, including in San Francisco County, have been exposed to BPA from use of the Products  
17 without having first been provided a clear and reasonable exposure warning. The individuals  
18 subject to the violative exposures include normal and foreseeable users and consumers that use the  
19 Products.

20 **SATISFACTION OF NOTICE REQUIREMENTS**

21 27. Plaintiff purchased the Product from Walmart. At the time of purchase, Defendants  
22 did not provide a Proposition 65 exposure warning for BPA or any other Proposition 65 listed  
23 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

24 28. The Product was sent to a testing laboratory to determine the concentration of BPA  
25 present on the surface of the Product.

26 29. The laboratory provided the results of its analysis. Surface BPA was collected using  
27 a wipe test. Results of this test concluded the presence of BPA at the surface of the product (the  
28 “Chemical Test Report”).

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

6           31.     On July 11, 2022, Plaintiff received from the analytical chemist an exposure  
7 assessment report which concluded that persons in California who use the Products will be exposed  
8 to levels of BPA that require a Proposition 65 exposure warning.

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

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

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

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

1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendants for their 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 a distributor and/or retailer  
6 of the Products.

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

9 39. The Products do 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 July 11, 2022, continuing until the present, that Defendants have  
12 continued to knowingly and intentionally expose California users and consumers of the Products  
13 to BPA 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. The primary route of exposure to  
16 BPA from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the  
17 user handles the Products, or the Products are placed in contact with exposed areas of the user's  
18 skin. If the Products contact hard water and/or soaps at elevated pH, higher extraction rates of BPA  
19 and accumulation of BPA at the surface of the Products will result. If the Products are placed in  
20 contact with the user's mouth, ingestion of BPA can occur resulting in oral exposure to BPA.  
21 Additionally, exposure through ingestion will occur by touching the Products with subsequent  
22 touching of the user's hand to mouth.

23 42. Plaintiff, based on her best information and belief, avers that such exposures will  
24 continue every day until clear and reasonable warnings are provided to purchasers and users or  
25 until BPA is removed from the Products.

26 43. Defendants have knowledge that the normal and reasonably foreseeable use of the  
27 Product exposes individuals to BPA, and Defendants intend those exposures to BPA will occur by  
28



1 their deliberate, non-accidental participation in the importation, distribution, sale and offering of  
2 the Products to consumers in California.

3 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to the  
4 filing of the complaint.

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

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
11 relief:

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

15 B. That the Court preliminarily and permanently enjoin Defendants mandating  
16 Proposition 65 compliant warnings on the Products;

17 C. That the Court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
18 amount of \$50,000.00.

19 D. That the Court grant any further relief as may be just and proper.

20 Dated: July 7, 2023

BRODSKY SMITH 

21 By: \_\_\_\_\_

22 Evan J. Smith (SBN242352)

23 Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

24 Telephone: (877) 534-2590

25 Facsimile: (310) 247-0160

26 *Attorneys for Plaintiff*