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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/02/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-23-608069

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 HARRY'S, INC., RITE AID
CORPORATION,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

15 Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his 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 *Harry's*® shave
27 gels, UPC# 855380004281, sold and/or distributed by defendants Harry's, Inc. ("Harry's") and/or
28 defendant Rite Aid Corporation ("Rite Aid") (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 (up to a maximum civil penalty amount per violation of \$912,000.00) to be
13 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
14 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
15 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
16 25249.7.

17 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
18 without a requisite exposure warning, *Harry's*® shave gels, UPC# 855380004281, (the
19 “Products”) that expose persons to DEA when used for their intended purpose.

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

24 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
25 65 in accordance with Health and Safety Code § 25249.7(b).

26 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
27 Defendants to provide purchasers or users of the Products with required warnings related to the
28

1 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code
2 § 25249.7(a).

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

4 **PARTIES**

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

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

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

19 **VENUE AND JURISDICTION**

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

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

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

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

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

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

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

18 **FACTUAL BACKGROUND**

19 22. On June 22, 2012, the State of California listed DEA as a chemical known to the
20 State to cause cancer and it has come under the purview of Proposition 65 regulations since that
21 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 23. The exposures that are the subject of the Notice result from the purchase,
23 acquisition, handling and recommended use of the Product. The primary route of exposure to DEA
24 is through dermal exposure. Some amount of exposure through ingestion can occur by touching
25 the Product with subsequent touching of the user’s hand to mouth. No clear and reasonable warning
26 is provided with the Products regarding the health hazards of exposure to DEA.
27

1 continued to knowingly and intentionally expose California users and consumers of the Products
2 to DEA without providing required warnings under Proposition 65.

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

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

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

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

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

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

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 (up to a maximum civil penalty amount per
6 violation of \$912,000.00) in accordance with Health and Safety Code § 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: August 2, 2023

BRODSKY SMITH

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