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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/10/2023
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

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

11 EMA BELL,
12 Plaintiff,
13 vs.
14 HOMEGOODS, INC.,
15 Defendant.

16 Case No.: CGC-23-607770

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

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

17 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
18 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 first amended complaint is a representative action brought by Plaintiff in the
27 public interest of the citizens of the State of California to enforce the People’s right to be informed
28 of the health hazards caused by exposure to lead and/or di(2-ethylhexyl) phthalate (DEHP), toxic
chemicals found in products sold and/or distributed by defendant Homegoods, Inc. (“Homegoods”
or “Defendant”) in California.

1 3. Lead¹ and DEHP² are harmful chemicals known to the State of California to cause
2 cancer and birth defects or other reproductive harm.

3 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
4 within California or sell products therein to comply with Proposition 65 regulations. Included in
5 such regulations is the requirement that businesses must label any product containing a Proposition
6 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
7 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
8 chemical.

9 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
10 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
11 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
12 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
13 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
14 25249.7.

15 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
16 without a requisite exposure warning, (a) *Ceramica Cuore*® spoon rests, Style # 696007 (lead),
17 (b) Lucy King by *Bread + Butter*® canisters/jars, Style # 647366 (lead), and (c) *Asweets*® bags,
18 Style # 227676 (DEHP) (collectively, the “Products”) that expose persons to lead and/or DEHP
19 when used for their intended purpose.

20 7. Defendant’s failure to warn consumers and other individuals in California of the
21 health hazards associated with exposure to lead and/or DEHP in conjunction with the sale and/or
22 _____

23 ¹ On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and
24 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
25 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State
of California listed lead as a chemical known to cause birth defects or other reproductive harm.

26 ² On January 1, 1988, the State of California listed DEHP as a chemical known to the State to
27 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.
28 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24,
2003, the State of California listed DEHP as a chemical known to cause birth defects or other
reproductive harm.

1 distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
2 enjoinder and civil penalties described herein.

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

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

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

10 **PARTIES**

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

15 12. Defendant Homegoods, through its business, effectively imports, distributes, sells,
16 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that
17 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

18 13. Plaintiff alleges that defendant Homegoods is a "person" in the course of doing
19 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

20 **VENUE AND JURISDICTION**

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

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

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 Defendant because Defendant is either a citizen of
4 the State of California, has sufficient minimum contacts with the State of California, is registered
5 with the California Secretary of State as foreign corporations authorized to do business in the State
6 of California, and/or has otherwise purposefully availed itself of the California market. Such
7 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
8 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 and 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 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
2 State to cause cancer and birth defects or other reproductive harm.

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

8 24. The exposures that are the subject of the Notices result from the purchase,
9 acquisition, handling, and recommended use of the Products. The primary route of exposure to
10 lead and/or DEHP is through dermal absorption directly through the skin when consumers use,
11 touch, or handle the Products. Exposure through ingestion will occur by touching the Product with
12 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
13 with the Products regarding the health hazards of exposure.

14 25. Defendant has processed, marketed, distributed, offered to sell and/or sold the
15 Products in California since at least August 18, 2022 with respect to the *Ceramica Cuore*® and
16 Lucy King by *Bread + Butter*® Products; and since at least December 30, 2022 with respect to the
17 *Asweets*® Product. The Products continue to be distributed and sold in California without the
18 requisite warning information.

19 26. At all times relevant to this action, Defendant has knowingly and intentionally
20 exposed users and/or consumers of the Products to lead and/or DEHP without first giving a clear
21 and reasonable exposure warning to such individuals.

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

1 SATISFACTION OF NOTICE REQUIREMENTS

2 28. Plaintiff purchased the Products from Homegoods. At the time of purchase,
3 Homegoods did not provide a Proposition 65 exposure warning for lead, DEHP, or any other
4 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
5 *supra*.

6 29. The *Ceramica Cuore*® and Lucy King by *Bread + Butter*® products were sent to
7 a testing laboratory to determine if, and what amount of lead would migrate and/or leach from the
8 products; and the *Asweets*® product was sent to a testing laboratory for phthalate testing to
9 determine the phthalate content of the product.

10 30. The laboratory provided the results of its analysis of the *Ceramica Cuore*® and
11 Lucy King by *Bread + Butter*® products. Results of this wipe test found the Products expose users
12 to lead (the “Lead Chemical Test Reports”).

13 31. The laboratory provided the results of its analysis of the *Asweets*® product. Results
14 of this test determined the Product exposes users to DEHP (the “DEHP Chemical Test Report”).

15 32. The Lead Chemical Test Reports and the DEHP Chemical Test Report are
16 collectively referred to herein, as the “Chemical Test Reports.”

17 33. Plaintiff provided each Chemical Test Report and each Product to an analytical
18 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable
19 and foreseeable use of the Products, exposure to lead and/or DEHP will occur at levels that require
20 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
21 the California Code of Regulations.

22 34. On August 18, 2022, Plaintiff received from the analytical chemist an exposure
23 assessment report for the *Ceramica Cuore*® and Lucy King by *Bread + Butter*® products which
24 concluded that persons in California who use these Products will be exposed to levels of lead that
25 require a Proposition 65 exposure warning; and on December 30, 2022, Plaintiff received from the
26 analytical chemist an exposure assessment report for the *Asweets*® product which concluded that
27 persons in California who use the *Asweets*® product will be exposed to levels of DEHP that require
28 a Proposition 65 exposure warning.

1 43. Plaintiff, based on her best information and belief, avers that at all relevant times
2 herein, and at least since August 18, 2022 with respect to the *Ceramica Cuore*® and Lucy King
3 by *Bread + Butter*® Products; and since at least December 30, 2022 with respect to the *Asweets*®
4 Product, continuing until the present, that Defendant has continued to knowingly and intentionally
5 expose California users and consumers of the Products to lead and/or DEHP without providing
6 required warnings under Proposition 65.

7 44. The exposures that are the subject of the Notices result from the purchase,
8 acquisition, handling and recommended use of the Products. The primary route of exposure to the
9 is through dermal absorption directly through the skin when consumers use, touch, or handle the
10 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
11 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
12 regarding the health hazards of exposure.

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

16 46. Defendant has knowledge that the normal and reasonably foreseeable use of the
17 Products expose individuals to lead and/or DEHP, and Defendant intends that exposures to lead
18 and/or DEHP will occur by its deliberate, non-accidental participation in the importation,
19 distribution, sale and offering of the Products to consumers in California

20 47. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
21 First Amended Complaint.

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

24 49. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
25 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 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 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: August 10, 2023

BRODSKY SMITH

13 By:  _____

14 Evan J. Smith (SBN242352)
15 Ryan P. Cardona (SBN302113)
16 9595 Wilshire Boulevard, Suite 900
17 Beverly Hills, CA 90212
18 Telephone: (877) 534-2590
19 Facsimile: (310) 247-0160

Attorneys for Plaintiff

EXHIBIT "A"

LAW OFFICES
BRODSKY & SMITH, LLC

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NEW YORK OFFICE
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516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

August 18, 2022

President/CEO/Owner Ceramica Cuore Via Civita Castellana, snc – 01030 Castel Sant’Elia – (VT) ITALY	President/CEO HomeGoods, Inc. 770 Cochituate Road Framingham, MA 01701
President/CEO HomeGoods, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the “Notice”) is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC (“Brodsky Smith”) represents Ema Bell (“Bell”), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Ceramica Cuore; HomeGoods, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least August 18, 2022 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Spoon Rest	Ceramica Cuore Spoon Rest

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion and dermal absorption exposure. When used for its intended purpose, the Product will be in contact with foods. The Listed Chemical will leach into the foods it comes into contact with. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “B”

LAW OFFICES
BRODSKY & SMITH, LLC

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PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

August 18, 2022

President/CEO Duke Design Pty Ltd. 7 Staniland Gr Elsternwick Vic 3185 AUSTRALIA	President/CEO HomeGoods, Inc. 770 Cochituate Road Framingham, MA 01701
President/CEO HomeGoods, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Duke Design Pty Ltd.; HomeGoods, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least August 18, 2022 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Jar/Canister	Lucy King by Bread + Butter Canister/Jar

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion and dermal absorption exposure. When used for its intended purpose, the Product will be in contact with foods. The Listed Chemical will leach into the foods it comes into contact with. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “C”

LAW OFFICES
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516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

December 30, 2022

President/CEO Zhejiang Asweets Kids Product Co., Ltd. Rm. 2102 Bldg. A Senhe Plaza No. 238 Hanghai Road Hangzhou Zhejiang CHINA	President/CEO Zhejiang Asweets Kids Product Co., Ltd. Shangpu Industry Area Shangyu District Shaoxing Zhejiang CHINA 312375
President/CEO/Owner Laughing Moon Trading Company PO Box 72087 San Jose, CA 95172-0087	President/CEO Homegoods, Inc. c/o The Corporation Trust Company Corporatin trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Homegoods, Inc. 770 Cochituate Road Framingham, MA 01701	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Zhejiang Asweets Kids Product Co., Ltd.; Laughing Moon Trading Company; Homegoods, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least December 30, 2022 and are continuing to this day.
4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Bag	Asweets Bag 650226193040

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health &

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary