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

**09/20/2023**  
Clerk of the Court

BY: AUSTIN LAM  
Deputy Clerk

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

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 CVS PHARMACY, INC.,

15 Defendant.

Case No.:

**CGC-23-609212**

**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 lead, a toxic chemical found in *Precious Moments*® mugs, #  
28 893342001084, sold and/or distributed by defendant CVS Pharmacy, Inc. (“CVS” or “Defendant”)  
in California.

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

7           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
8 within California or sell products therein to comply with Proposition 65 regulations. Included in  
9 such regulations is the requirement that businesses must label any product containing a Proposition  
10 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
11 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
12 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 Defendant distributes and/or offers for sale in California,  
20 without a requisite exposure warning, *Precious Moments*® mugs, # 893342001084, (the  
21 “Products”) that expose persons to lead when used for their intended purpose.

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

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

28



1 of California, and/or has otherwise purposefully availed itself of the California market. Such  
2 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
3 permissible with traditional notions of fair play and substantial justice.

4 **STATUTORY BACKGROUND**

5 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
6 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
7 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

8 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
9 “clear and reasonable warning” before being exposed to substances listed by the State of California  
10 as causing cancer and birth defects or other reproductive harm. H&S Code § 25249.6 states, in  
11 pertinent part:

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

15 19. An exposure to a chemical in a consumer product is one “which results from a  
16 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
17 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
18 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
19 shall provide a warning to any person to whom the product is sold or transferred unless the product  
20 is packaged or labeled with a clear and reasonable warning.”

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

23 a. A warning that appears on a product’s label or other labeling.  
24  
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 of the user's hand to mouth. No clear and reasonable warning is provided with the Products  
2 regarding the health hazards of exposure.

3 24. Defendant has processed, marketed, distributed, offered to sell and/or sold the  
4 Products in California since at least September 28, 2022. The Products continue to be distributed  
5 and sold in California without the requisite warning information.

6 25. At all times relevant to this action, Defendant has knowingly and intentionally  
7 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable  
8 exposure warning to such individuals.

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

15 **SATISFACTION OF NOTICE REQUIREMENTS**

16 27. Plaintiff purchased the Product from CVS. At the time of purchase, Defendant did  
17 not provide a Proposition 65 exposure warning for lead or any other Proposition 65 listed chemical  
18 in a manner consistent with H&S Code § 25603.1 as described *supra*.

19 28. The Product was sent to a testing laboratory to determine if, and what amount of  
20 lead would migrate and/or leach from the Product.

21 29. The laboratory provided the results of its analysis. Results of this test determined  
22 the Product exposes users to lead (the "Chemical Test Report").

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



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

2           40.     Plaintiff, based on her best information and belief, avers that at all relevant times  
3 herein, and at least since September 28, 2022, continuing until the present, that Defendant has  
4 continued to knowingly and intentionally expose California users and consumers of the Product to  
5 lead without providing required warnings under Proposition 65.

6           41.     The exposures that are the subject of the Notice result from the purchase,  
7 acquisition, handling and recommended use of the Product. 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 Product with subsequent touching  
10 of the user's hand to mouth. No clear and reasonable warning is provided with the Products  
11 regarding the health hazards of exposure.

12          42.     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          43.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
16 Products exposes individuals to lead, and Defendant intends that exposures to lead will occur by  
17 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
18 Products to consumers in California

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

21          45.     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          46.     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 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: September 20, 2023

BRODSKY SMITH

13 By:  \_\_\_\_\_

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