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4	Telephone: (877) 534-2590 Facsimile: (310) 247-0160	02/02/2024 Clerk of the Court BY: AUSTIN LAM	
5	Attorneys for Plaintiffs	Deputy Clerk	
6	SUPERIOR COURT OF 7	THE STATE OF CALIFORNIA	
7	COUNTY OF SAN FRANCISCO		
8		CGC-24-612087	
9	PRECILA BALABBO, EMA BELL,	Case No.:	
10	Plaintiffs,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
11 12	V.	(Violation of Health & Safety Code § 25249.5 et	
12	LANOCORP USA INC.,	seq.)	
13	Defendant.		
15	Plaintiffs Precila Balabbo and Ema Bell (collectively, "Plaintiffs" and each a "Plaintiff"),		
16	by and through their attorneys, allege the following cause of action in the public interest of the		
17	citizens of the State of California.		
18	BACKGROUND OF THE CASE		
19	1. Plaintiffs bring 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 without first giving clear and reasonable		
24	warning to such individual". Health & Safety Code § 25249.6.		
25		ve action brought by Plaintiffs 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 diethanolamine (DEA), a toxic chemical found in (a) By Nature®		
28	sheet face masks, # 1288-084799696-000499-12-8, (b) Rata & Co.® brightening Vitamin C &		
	- 1 - COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5		

collagen sheet masks, # 1288-085294367-000499-12-8, and (c) *Rata & Co.*® quenching
 hyaluronic acid sheet masks, # 88-8153-183181-000499-13-6, sold and/or distributed by defendant
 Lanocorp USA Inc. ("Lanocorp" or "Defendant") in California.

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

6. Plaintiffs allege that Defendant distributes and/or offers for sale in California,
without a requisite exposure warning, (a) *By Nature*® sheet face masks, # 1288-084799696000499-12-8, (b) *Rata & Co*.® brightening Vitamin C & collagen sheet masks, # 1288085294367-000499-12-8, and (c) *Rata & Co*.® quenching hyaluronic acid sheet masks, # 888153-183181-000499-13-6, (the "Products") that expose persons to DEA when used for their
intended purpose.

7. Defendant's failure to warn consumers and other individuals in California of the
health hazards associated with exposure to DEA in conjunction with the sale and/or distribution

of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinment and civil
 penalties described herein.

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

9. Plaintiffs also seek injunctive relief, preliminarily and permanently, requiring
Defendant to provide purchasers or users of the Products with required warnings related to the
dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code
§ 25249.7(a).

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## PARTIES

Plaintiffs further seek a reasonable award of attorney's fees and costs.

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

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

19 13. Defendant Lanocorp, through its business, effectively imports, distributes, sells,
20 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that
21 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
22 Plaintiffs allege that defendant Lanocorp is a "person" in the course of doing business within the
23 meaning of Health & Safety Code sections 25249.6 and 25249.11.

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## **VENUE AND JURISDICTION**

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

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15. 1 This Court has jurisdiction over this action pursuant to California Constitution 2 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those 3 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has 4 jurisdiction over this lawsuit. 5

6 16. This Court has jurisdiction over Defendant because Defendant is either a citizen of 7 the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State 8 9 of California, and/or has otherwise purposefully availed itself of the California market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and 10 11 permissible with traditional notions of fair play and substantial justice.

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## STATUTORY BACKGROUND

17. 13 The people of the State of California declared in Proposition 65 their right "[t]o be 14 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive 15 harm." (Section 1(b) of Initiative Measure, Proposition 65.)

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18. To effect this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to substances listed by the State of California 17 as causing cancer and birth defects or other reproductive harm. H&S Code § 25249.6 states, in 18 19 pertinent part:

No person in the course of doing business shall knowingly and intentionally expose any 20 individual to a chemical known to the state to cause cancer or reproductive toxicity without 21 first giving clear and reasonable warning to such individual...

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

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

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

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

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

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

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

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# FACTUAL BACKGROUND

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

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 <sup>&</sup>lt;sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning 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.

23. The exposures that are the subject of the Notices result from the purchase, acquisition, handling and recommended use of the Products. The primary route of exposure to DEA is through dermal exposure. Some amount of exposure through ingestion can occur by touching the Products 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 DEA.

24. Defendant has manufactured, processed, marketed, distributed, offered to sell
and/or sold the Products in California since at least February 27, 2023 with respect to the *By Nature*® sheet face masks and since at least March 22, 2023 with respect to the *Rata & Co*.®
brightening Vitamin C & collagen sheet masks and the *Rata & Co*.® quenching hyaluronic acid
sheet masks. The Products continue to be distributed and sold in California without the requisite
warning information.

At all times relevant to this action, Defendant has knowingly and intentionally
 exposed users of the Products to DEA without first giving a clear and reasonable exposure warning
 to such individuals.

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

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## SATISFACTION OF NOTICE REQUIREMNTS

27. Plaintiffs purchased the Products from The TJX Companies, Inc. At the time of
 purchase, Defendant did not provide a Proposition 65 exposure warning for DEA or any other
 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
 *supra*.

27 28. The Products were sent to a testing laboratory for diethanolamine testing to
28 determine the DEA content of the Products.

29. On February 6, 2023, the laboratory provided the results of its analysis. Results of
 these tests determined the Products expose users to DEA (collectively, the "Chemical Test
 Reports" and each a "Chemical Test Report").

30. Plaintiffs provided the Chemical Test Reports and Products to an analytical chemist
to determine if, based on the findings of the Chemical Test Reports and the reasonable and
foreseeable use of the Products, exposure to DEA will occur at levels that require Proposition 65
warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
Code of Regulations.

9 31. On February 27, 2023, Plaintiff Precila Balabbo received from the analytical
10 chemist an exposure assessment report which concluded that persons in California who use the *By*11 *Nature*® sheet face masks will be exposed to levels of DEA that require a Proposition 65 exposure
12 warning. On March 22, 2023, Plaintiffs received from the analytical chemist an exposure
13 assessment report which concluded that persons in California who use the *Rata & Co*.®
14 brightening Vitamin C & collagen sheet masks and the *Rata & Co*.® quenching hyaluronic acid
15 sheet masks will be exposed to levels of DEA that require a Proposition 65 exposure warning.

32. On February 27, 2023, Plaintiff Precila Balabbo gave notice of alleged violation of
Health and Safety Code § 25249.6 (the "February Notice") to Defendant concerning the exposure
of California citizens to DEA from use of the *By Nature*® sheet face masks without proper
warning, subject to a private action to Defendant and to the California Attorney General's office
and the offices of the County District attorneys and City Attorneys for each city with a population
greater than 750,000 persons wherein the herein violations allegedly occurred.

33. On March 22, 2023, Plaintiff Precila Balabbo gave notice of alleged violation of
Health and Safety Code § 25249.6 (the "Balabbo March Notice") to Defendant concerning the
exposure of California citizens to DEA from use of the *Rata & Co*.® brightening Vitamin C &
collagen sheet masks without proper warning, subject to a private action to Defendant and to the
California Attorney General's office and the offices of the County District attorneys and City
Attorneys for each city with a population greater than 750,000 persons wherein the herein
violations allegedly occurred.

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34. On March 22, 2023, Plaintiff Ema Bell gave notice of alleged violation of Health
 and Safety Code § 25249.6 (the "Bell March Notice") to Defendant concerning the exposure of
 California citizens to DEA from use of the *Rata & Co.*® quenching hyaluronic acid sheet masks
 without proper warning, subject to a private action to Defendant and to the California Attorney
 General's office and the offices of the County District attorneys and City Attorneys for each city
 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

7 35. The February Notice, the Balabbo March Notice, and the Bell March Notice are
8 collectively referred to herein as, the "Notices."

9 36. The Notices complied with all procedural requirements of Proposition 65 including
10 the attachment of a Certificate of Merit affirming that Plaintiffs' counsel had consulted with at
11 least one person with relevant and appropriate expertise who reviewed relevant data regarding
12 DEA exposure, and that counsel believed there was meritorious and reasonable cause for a private
13 action.

After receiving the Notices, and to Plaintiffs' best information and belief, none of
the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
the subject of the Notices.

18 38. Plaintiffs are commencing this action more than sixty (60) days from the date of
19 the Notices to Defendant, as required by law.

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## **FIRST CAUSE OF ACTION**

## (By Plaintiffs against Defendant for the Violation of Proposition 65)

39. Plaintiffs hereby repeats and incorporates by reference paragraphs 1 through 38 of
this Complaint as though fully set forth herein.

40. Defendant has, at all times mentioned herein, acted as distributer, and/or retailer of
the Products.

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

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42. The Products do not comply with the Proposition 65 warning requirements.

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5

<sup>- 8 -</sup>

43. Plaintiffs, based on their best information and belief, avers that at all relevant times
herein, and since at least February 27, 2023 with respect to the *By Nature*® sheet face masks; since
at least March 22, 2023 with respect to the *Rata & Co*.® brightening Vitamin C & collagen sheet
masks and the *Rata & Co*.® quenching hyaluronic acid sheet masks, continuing until the present,
that Defendant has continued to knowingly and intentionally expose California users and
consumers of the Products to DEA without providing 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 9 DEA is through dermal exposure. Some amount of exposure through ingestion can occur by 10 touching the Products with subsequent touching of the user's hand to mouth. No clear and 11 reasonable warning is provided with the Products regarding the health hazards of exposure to DEA.

45. Plaintiffs, based on their best information and belief, avers that such exposures will
continue every day until clear and reasonable warnings are provided to purchasers and users or
until this known toxic chemical is removed from the Products.

46. Defendant has knowledge that the normal and reasonably foreseeable use of the
Products exposes individuals to DEA, and Defendant intends that exposures to DEA will occur by
its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
Products to consumers in California

19 47. Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to20 this Complaint.

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

49. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
authorized to grant injunctive relief in favor of Plaintiffs and against Defendant.

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5

- 9 -

1	PRAYER FOR RELIEF	
2	WHEREFORE, Plaintiffs demand judgment against Defendant and requests the following	
3	relief:	
4	A. That the court assess civil penalties against Defendant in the amount of \$2,500 per	
5	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 Plaintiffs 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: February 2, 2024 BRODSKY SMITH	
13	By: Evan J. Smith (SBN242352)	
14	Ryan P. Cardona (SBN302113)	
15	9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212	
16	Telephone: (877) 534-2590 Facsimile: (310) 247-0160	
17	Attorneys for Plaintiffs	
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5	