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County of San Francisco

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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 THE TJX COMPANIES, INC.,

15 Defendant.

Case No.: CGC-23-608056

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

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

16 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
17 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 second amended complaint is a representative action brought by Plaintiff in
26 the public interest of the citizens of the State of California to enforce the People’s right to be
27 informed of the health hazards caused by exposure to lead and/or diethanolamine (DEA), toxic
28 chemicals found in products sold and/or distributed by defendant The TJX Companies, Inc. (“TJX”
or “Defendant”) in California.

1 3. Lead¹ is a harmful chemical known to the State of California to cause cancer and
2 birth defects or other reproductive harm. DEA² is a harmful chemical known to the State of
3 California to cause cancer.

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

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

16 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
17 without a requisite exposure warning, (a) Retinol facial essence masks, UPC # 4582419536982
18 (DEA), (b) *Heathcote & Ivory*® magical myth marvel mugs, # 9418-639010 (lead), and (c)
19 *Botanical Collection by CornerRuby*® spoons, # 1280 108702297 01499 14-1 (lead) (collectively,
20 the “Products”) that expose persons to lead and/or DEA when used for their intended purpose.

21 7. Defendant’s failure to warn consumers and other individuals in California of the
22 health hazards associated with exposure to lead and/or DEA in conjunction with the sale and/or
23

24 ¹ On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and
25 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
26 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.

27 ² On June 22, 2012, the State of California listed DEA as a chemical known to the State to cause
28 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).

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

18 13. Plaintiff alleges that defendant TJX is a "person" in the course of doing business
19 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 June 22, 2012, the State of California listed DEA as a chemical known to the
4 State to cause cancer and it has come under the purview of Proposition 65 regulations since that
5 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

12 25. Defendant has processed, marketed, distributed, offered to sell and/or sold the
13 Products in California since at least August 4, 2022 with respect to the Retinol facial essence
14 masks; since at least February 3, 2023 with respect to the *Heathcote & Ivory*® Product; and since
15 at least April, 18, 2023 with respect to the *Botanical Collection by CornerRuby*® Product. The
16 Products continue to be distributed and sold in California without the requisite warning
17 information.

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

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

1 **SATISFACTION OF NOTICE REQUIREMENTS**

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

5 29. The *Heathcote & Ivory*® product, and *Botanical Collection by CornerRuby*®
6 product were sent to a testing laboratory to determine if, and what amount of lead would migrate
7 and/or leach from the products; and the Retinol facial essence masks were sent to a testing
8 laboratory for diethanolamine testing to determine the diethanolamine content of the product.

9 30. For each Product that was sent to the laboratory, Plaintiff received a chemical test
10 report (collectively, the “Chemical Test Reports”). The Chemical Test Report findings determined
11 the *Heathcote & Ivory*® product, and *Botanical Collection by CornerRuby*® product exposes users
12 to lead; and the Retinol facial essence masks exposes users to DEA.

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

18 32. On August 4, 2022, Plaintiff received from the analytical chemist an exposure
19 assessment report for the Retinol facial essence masks that concluded that persons in California
20 who use the Retinol facial essence masks will be exposed to levels of DEA that require a
21 Proposition 65 exposure warning. On February 3, 2023, Plaintiff received from the analytical
22 chemist an exposure assessment report for the *Heathcote & Ivory*® product that concluded that
23 persons in California who use the *Heathcote & Ivory*® product will be exposed to levels of lead
24 that require a Proposition 65 exposure warning. On April 18, 2023, Plaintiff received from the
25 analytical chemist an exposure assessment report for the *Botanical Collection by CornerRuby*®
26 product that concluded that persons in California who use the *Botanical Collection by*
27 *CornerRuby*® product will be exposed to levels of lead that require a Proposition 65 exposure
28 warning.

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

2 41. Plaintiff, based on her best information and belief, avers that at all relevant times
3 herein, and since at least August 4, 2022 with respect to the Retinol facial essence masks; since at
4 least February 3, 2023 with respect to the *Heathcote & Ivory*® magical myth marvel mugs; and
5 since at least April 18, 2023 with respect to the *Botanical Collection by CornerRuby*® spoons
6 continuing until the present, that Defendant has continued to knowingly and intentionally expose
7 California users and consumers of the Products to lead and/or DEA without providing required
8 warnings under Proposition 65.

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

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

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

22 45. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
23 Second Amended Complaint.

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

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

28

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: January 13, 2025

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