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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

05/06/2024
Clerk of the Court

BY: AUSTIN LAM
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-24-614422**

12 EMA BELL,

13 Plaintiff,

14 vs.

15 COLEWILL Aidan, LLC,

16 Defendant.

Case No.:

**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 complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to lead, a toxic chemical found in (a) Cole’s chopped clams and (b)
Cole’s select snow crabs sold and/or distributed by defendant Colewillaidan, LLC (“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, (a) Cole’s chopped clams and (b) Cole’s select snow crabs
21 (collectively, the “Products” and each a “Product”) that expose persons to lead when consumed.

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).

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1 with the California Secretary of State as foreign corporations authorized to do business in the State
2 of California, and/or has otherwise purposefully availed itself of the California market. Such
3 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
4 permissible with traditional notions of fair play and substantial justice.

5 STATUTORY BACKGROUND

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

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

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

16 18. In this case, exposures are caused by consumer products. A “Consumer Product” is
17 defined as “any article, or component part thereof, including food, that is produced, distributed, or
18 sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit. 27, §
19 25600.1, subd. (d).) Food includes “dietary supplements” as defined in California Code of
20 Regulations, title 17, section 10200. (*Id.* at subd. (g).) An exposure to a chemical in a Consumer
21 Product is one “which results from a person’s acquisition, purchase, storage, consumption or other
22 reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
23 consumer service.” (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that “a person in the
24 course of doing business ... shall provide a warning to any person to whom the product is sold or
25 transferred unless the product is packaged or labeled with a clear and reasonable warning.”
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1 19. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
2 more of the following methods individually or in combination:¹

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

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

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

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

14 20. Proposition 65 provides that any “person who violates or threatens to violate” the
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
16 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
17 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
19 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

20 **FACTUAL BACKGROUND**

21 21. On October 1, 1992, the state of California listed lead as a chemical known to cause
22 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
23 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
24 1987, the State of California listed lead as a chemical known to cause birth defects or other
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27 ¹ 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 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 22. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, and recommended consumption of the Products. The primary route of exposure to lead
5 is through ingestion. When foods contaminated with lead are consumed, ingestion of lead will
6 occur which will increase blood lead levels. No clear and reasonable warning is provided with the
7 Products regarding the health hazards of exposure.

8 23. Defendant has processed, marketed, distributed, offered to sell and/or sold the
9 Products in California since at least July 28, 2023. The Products continue to be distributed and
10 sold in California without the requisite warning information.

11 24. At all times relevant to this action, Defendant has knowingly and intentionally
12 exposed consumers of the Products to lead without first giving a clear and reasonable exposure
13 warning to such individuals.

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

20 **SATISFACTION OF NOTICE REQUIREMENTS**

21 26. Plaintiff purchased the Products from Cost Plus World Market, LLC. At the time
22 of purchase, Defendant did not provide a Proposition 65 exposure warning for lead or any other
23 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
24 *supra*.

25 27. The Products were sent to a testing laboratory to determine if, and what amount of,
26 lead a consumer would be exposed to per serving size.

27 28. The laboratory provided the results of its analysis. Results of this test determined
28 the Products exposes consumers to lead (the “Chemical Test Report”).

1 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of
2 this Complaint as though fully set forth herein.

3 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
4 the Product.

5 37. Consumption of the Products will expose consumers to lead, a hazardous chemical
6 found on the Proposition 65 list of chemicals known to be hazardous to human health.

7 38. The Product does not comply with the Proposition 65 warning requirements.

8 39. Plaintiff, based on her best information and belief, avers that at all relevant times
9 herein, and at least since July 28, 2023, continuing until the present, that Defendant has continued
10 to knowingly and intentionally expose California consumers of the Product to lead without
11 providing required warnings under Proposition 65.

12 40. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, and recommended consumption of the Products. The primary route of exposure to lead
14 is through ingestion. When foods contaminated with lead are consumed, ingestion of lead will
15 occur which will increase blood lead levels. No clear and reasonable warning is provided with the
16 Products regarding the health hazards of exposure.

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

20 42. Defendant has knowledge that the normal and reasonably foreseeable consumption
21 of the Products exposes individuals to lead, and Defendant intends that exposures to lead will occur
22 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
23 the Products to consumers in California

24 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
25 Complaint.

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

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