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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

08/07/2024
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 AMERICAN CRAFTS, L.C.,
15 AMERICAN CRAFTS HOLDINGS,
16 LLC, MICHAELS STORES, INC.,
17 MICHAELS STORES PROCUREMENT
18 COMPANY, INC.,

19 Defendants.

Case No.:

CGC-24-617075

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

20 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause
21 of action in the public interest of the citizens of the State of California.

22 **BACKGROUND OF THE CASE**

23 1. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
25 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

2. This complaint is a representative action brought by Plaintiff in the public interest
of the citizens of the State of California against defendants American Crafts, L.C., American Crafts

1 Holdings, LLC, Michaels Stores, Inc., and Michaels Stores Procurement Company, Inc.
2 (collectively, “Defendants” and each a “Defendant”) to enforce the People’s right to be informed
3 of the health hazards caused by exposure to bisphenol A (BPA) from the use of *Crafter’s*
4 *Essentials*TM trim and score boards, UPC # 633356600718 that are manufactured, distributed,
5 offered for sale and/or sold by Defendants in California.

6 3. BPA is a harmful chemical known to the State of California to cause birth defects
7 or other reproductive harm. On May 11, 2015, the State of California listed BPA as a chemical
8 known to the State to cause birth defects or other reproductive harm and BPA has come under the
9 purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health
10 & Safety Code §§ 25249.8 & 25249.10(b).

11 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
12 within California or sell products therein to comply with Proposition 65 regulations. Included in
13 such regulations is the requirement that businesses must label any product containing a Proposition
14 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
15 exposing any person to any such listed chemical.

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
17 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
18 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
19 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
20 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
21 25249.7.

22 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
23 without a requisite Proposition 65 exposure warning, *Crafter’s Essentials*TM trim and score boards,
24 UPC # 633356600718 (the “Products”) that expose persons to BPA when used as intended and/or
25 for its intended purpose.

26 7. Defendants’ failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to BPA from use of the Products in conjunction with the
28

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

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

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Products with required warnings related to the
7 dangers and health hazards associated with exposure to BPA from use of the Products pursuant to
8 Health and 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 American Crafts, L.C., through its business, effectively imports,
16 distributes, sells and/or offers the Products for sale or use in the State of California, or it implies
17 by its conduct that it imports, distributes, sells and/or offers the Products for sale or use in the State
18 of California. Plaintiff alleges that defendant American Crafts, L.C. is a "person" in the course of
19 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

20 13. Defendant American Crafts Holdings, LLC, through its business, effectively
21 imports, distributes, sells and/or offers the Products for sale or use in the State of California, or it
22 implies by its conduct that it imports, distributes, sells and/or offers the Products for sale or use in
23 the State of California. Plaintiff alleges that defendant American Crafts Holdings, LLC is a
24 "person" in the course of doing business within the meaning of Health & Safety Code sections
25 25249.6 and 25249.11.

26 14. Defendant Michaels Stores, Inc., through its business, effectively imports,
27 distributes, sells and/or offers the Products for sale or use in the State of California, or it implies
28 by its conduct that it imports, distributes, sells and/or offers the Products for sale or use in the State

1 of California. Plaintiff alleges that defendant Michaels Stores, Inc. is a “person” in the course of
2 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

3 15. Defendant Michaels Stores Procurement Company, Inc., through its business,
4 effectively imports, distributes, sells and/or offers the Products for sale or use in the State of
5 California, or it implies by its conduct that it imports, distributes, sells and/or offers the Products
6 for sale or use in the State of California. Plaintiff alleges that defendant Michaels Stores
7 Procurement Company, Inc. is a “person” in the course of doing business within the meaning of
8 Health & Safety Code sections 25249.6 and 25249.11.

9 **VENUE AND JURISDICTION**

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

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

19 18. This Court has jurisdiction over Defendants because each Defendant is either a
20 citizen of the State of California, has sufficient minimum contacts with the State of California, is
21 registered with the California Secretary of State as foreign corporations authorized to do business
22 in the State of California and/or has otherwise purposefully availed itself of the California market.
23 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
24 and permissible with traditional notions of fair play and substantial justice.

25 **STATUTORY BACKGROUND**

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

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

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

8 21. An exposure to a chemical in a consumer product is one “which results from a
9 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
10 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
11 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
12 shall provide a warning to any person to whom the product is sold or transferred unless the product
13 is packaged or labeled with a clear and reasonable warning.”

14 22. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
15 more of the following methods individually or in combination:¹

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

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

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

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26
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 d. A system of signs, public advertising identifying the system and toll-free
2 information services, or any other system that provides clear and reasonable warnings.

3 23. Proposition 65 provides that any “person who violates or threatens to violate” the
4 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
5 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
6 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
7 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
8 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

9 **FACTUAL BACKGROUND**

10 24. On May 11, 2015, the State of California listed BPA as a chemical known to the
11 State to cause birth defects or other reproductive harm and BPA has come under the purview of
12 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
13 Code §§ 25249.8 & 25249.10(b).

14 25. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the Product. The primary route of exposure to BPA
16 is through dermal absorption directly through the skin when consumers use, touch, or handle the
17 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
18 of the user’s hand to mouth. No clear and reasonable warning is provided with the Products
19 regarding the health hazards of exposure.

20 26. Defendants have distributed, offered to sell and/or sold the Products in California
21 since at least August 30, 2023. The Products continue to be distributed and sold in California
22 without a requisite Proposition 65 compliant BPA exposure warning.

23 27. At all times relevant to this action, Defendants have knowingly and intentionally
24 exposed users, consumers and/or purchasers of the Products to BPA without first providing a clear
25 and reasonable exposure warning to such individuals.

26 28. As a proximate result of Defendants’ actions, and as a person in the course of doing
27 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
28 California, including in San Francisco County, have been exposed to BPA from use of the Products

1 without having first been provided a clear and reasonable exposure warning. The individuals
2 subject to the violative exposures include normal and foreseeable users and consumers that use the
3 Products.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 29. Plaintiff purchased the Product from Michaels. At the time of purchase, Defendants
6 did not provide a Proposition 65 exposure warning for BPA or any other Proposition 65 listed
7 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

8 30. The Product was sent to a testing laboratory to determine if, and what amount of,
9 BPA would migrate and/or leach from the Product.

10 31. On August 15, 2023, the laboratory provided the results of its analysis. Results of
11 this test concluded the Products expose users to BPA (the “Chemical Test Report”).

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

17 33. On August 30, 2023, Plaintiff received from the analytical chemist an exposure
18 assessment report which concluded that persons in California who use the Products will be exposed
19 to levels of BPA that require a Proposition 65 exposure warning.

20 34. On August 30, 2023, Plaintiff gave notice of alleged violation of Health and Safety
21 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to BPA
22 from use of the Products without proper warning, subject to a private action to Defendants and to
23 the California Attorney General’s office and the offices of the County District attorneys and City
24 Attorneys for each city with a population greater than 750,000 persons wherein the herein
25 violations allegedly occurred.

26 35. The Notice complied with all procedural requirements of Proposition 65 including
27 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
28 least one person with relevant and appropriate expertise who reviewed relevant data regarding

1 BPA exposure, and that counsel believed there was meritorious and reasonable cause for a private
2 action.

3 36. After receiving the Notice, and to Plaintiff's best information and belief, none of
4 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
5 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
6 are the subject of the Notice.

7 37. Plaintiff is commencing this action more than sixty (60) days from the date of the
8 Notice to Defendants, as required by law.

9 **FIRST CAUSE OF ACTION**

10 **(By Plaintiff against Defendant for its Violation of Proposition 65)**

11 38. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 37 of
12 this first amended complaint as though fully set forth herein.

13 39. Defendants have, at all times mentioned herein, acted as a distributor and/or retailer
14 of the Products.

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

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

18 42. Plaintiff, based on her best information and belief, avers that at all relevant times
19 herein, and at least since August 30, 2023, continuing until the present, that Defendants have
20 continued to knowingly and intentionally expose California users and consumers of the Products
21 to BPA without providing required warnings under Proposition 65.

22 43. The exposures that are the subject of the Notice result from the purchase,
23 acquisition, handling and recommended use of the Product. The primary route of exposure to BPA
24 is through dermal absorption directly through the skin when consumers use, touch, or handle the
25 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
26 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
27 regarding the health hazards of exposure.

1 44. Plaintiff, based on her best information and belief, avers that such exposures will
2 continue every day until clear and reasonable warnings are provided to purchasers and users or
3 until BPA is removed from the Products.

4 45. Defendants have knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to BPA, and Defendants intend those exposures to BPA will occur by
6 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
7 Products to consumers in California.

8 46. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to the
9 filing of the complaint.

10 47. Pursuant to Health and Safety Code § 25249.7(b), because of the above-described
11 acts, each Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

12 48. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
13 authorized to grant injunctive relief in favor of Plaintiff and against each Defendant.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants 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 Defendants 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 7, 2024

BRODSKY SMITH

13 By:  _____

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