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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

05/09/2024
Clerk of the Court
BY: AUSTIN LAM

Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-24-614529

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 99 CENTS ONLY STORES LLC,

15 Defendant.

Case No.:

**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.

BACKGROUND OF THE CASE

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People’s right to be informed of the health
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and/or lead, toxic chemicals
27 found in (a) *Subrtex*® home décor bags, # X00263VCD, (b) *Opaline*™ spa gift set bags, UPC #
28 692962190020, (c) Momentum Brands bags, UPC # 018068166347, and (d) *Martha White*®

1 gluten free blueberry muffin mixes, UPC # 013300620124 sold and/or distributed by defendant 99
2 Cents Only Stores LLC (“99 Cents” or “Defendant”) in California.

3 3. DEHP¹ and lead² are harmful chemicals known to the State of California to cause
4 cancer and birth defects or other reproductive harm.

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

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

16 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
17 without a requisite exposure warning, (a) *Subrtex*® home décor bags, # X00263VCD, (b)
18 *Opaline*™ spa gift set bags, UPC # 692962190020, (c) Momentum Brands bags, UPC #
19 018068166347, and (d) *Martha White*® gluten free blueberry muffin mixes, UPC # 013300620124
20 (collectively, the “Products” and each a “Product”) that expose persons to DEHP and/or lead when
21 used for their intended purpose.

22 _____
23 ¹ On January 1, 1988, the State of California listed DEHP as a chemical known to the State to
24 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.
25 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24,
26 2003, the State of California listed DEHP as a chemical known to cause birth defects or other
27 reproductive harm.

28 ² On October 1, 1992, the state of California listed lead as a chemical known 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). On February 27, 1987, the State
of California listed lead as a chemical known to cause birth defects or other reproductive harm.

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement
2 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
3 jurisdiction over this lawsuit.

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

10 **STATUTORY BACKGROUND**

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

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

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

21 18. An exposure to a chemical in a consumer product is one “which results from a
22 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
23 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
24 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
25 shall provide a warning to any person to whom the product is sold or transferred unless the product
26 is packaged or labeled with a clear and reasonable warning.”
27
28

1 On October 24, 2003, the State of California listed DEHP as a chemical known to cause birth
2 defects or other reproductive harm.

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

8 23. The exposures that are the subject of the Notices result from the purchase,
9 acquisition, handling and recommended use of the Products. The primary route of exposure to
10 DEHP is through dermal absorption directly through the skin when consumers use, touch, or
11 handle the *Subrtex*® home décor bags, the *Opaline*™ spa gift set bags, and the Momentum Brands
12 bags. Exposure through ingestion will occur by touching the *Subrtex*® home décor bags, the
13 *Opaline*™ spa gift set bags, and the Momentum Brands bags with subsequent touching of the
14 user's hand to mouth. The primary route of exposure to lead is through ingestion. When foods
15 contaminated with lead are consumed, such as the *Martha White*® gluten free blueberry muffin
16 mixes, ingestion of lead will occur which will increase blood lead levels. No clear and reasonable
17 warning is provided with the Products regarding the health hazards of exposure.

18 24. Defendant has manufactured, processed, marketed, distributed, offered to sell
19 and/or sold the Products in California since at least May 19, 2023 with respect to the *Subrtex*®
20 home décor bags; since at least August 8, 2023 with respect to the *Opaline*™ spa gift set bags and
21 the Momentum Brands bags; and since at least September 19, 2023 with respect to the *Martha*
22 *White*® gluten free blueberry muffin mixes. The Products continue to be distributed and sold in
23 California without the requisite warning information.

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

27 26. As a proximate result of acts by Defendant, as a person in the course of doing
28 business within the meaning of H&S Code § 25249.11, individuals throughout the State of

1 California, including in San Francisco County, have been exposed to DEHP and/or lead without a
2 clear and reasonable warning on the Products. The individuals subject to the violative exposures
3 include normal and foreseeable users and consumers that use the Products, as well as all others
4 exposed to the Products.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 27. Plaintiff purchased the Product from 99 Cents. At the time of purchase, Defendant
7 did not provide a Proposition 65 exposure warning for DEHP, lead, or any other Proposition 65
8 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

9 28. The *Subrtex*® home décor bags, the *Opaline*™ spa gift set bags, and the
10 Momentum Brands bags were sent to a testing laboratory for phthalate testing to determine the
11 phthalate content of the Products. The *Martha White*® gluten free blueberry muffin mixes were
12 sent to a testing laboratory to determine if, and what amount of, lead a consumer would be exposed
13 to per serving size.

14 29. The laboratory provided the results of its analysis. Results of this test determined
15 the Product exposes users to DEHP and/or lead (the “Chemical Test Report”).

16 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
17 to determine if, based on the findings of the Chemical Test Report and the reasonable and
18 foreseeable use of the Product, exposure to DEHP and/or lead will occur at levels that require
19 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
20 the California Code of Regulations.

21 31. On May 19, 2023, Plaintiff received from the analytical chemist an exposure
22 assessment report which concluded that persons in California who use the *Subrtex*® home décor
23 bags will be exposed to levels of DEHP that require a Proposition 65 exposure warning. On August
24 8, 2023, Plaintiff received from the analytical chemist an exposure assessment report which
25 concluded that persons in California who use the *Opaline*™ spa gift set bags and the Momentum
26 Brands bags will be exposed to levels of DEHP that require a Proposition 65 exposure warning.
27 On September 19, 2023, Plaintiff received from the analytical chemist an exposure assessment
28 report which concluded that persons in California who consume the *Martha White*® gluten free

1 blueberry muffin mixes will be exposed to levels of lead that require a Proposition 65 exposure
2 warning.

3 32. On May 19, 2023 (*Subrtex*® home décor bags), August 8, 2023 (*Opaline*™ spa gift
4 set bags and Momentum Brands bags), and September 19, 2023 (*Martha White*® gluten free
5 blueberry muffin mixes), Plaintiff gave notice of alleged violation of Health and Safety Code §
6 25249.6 (collectively, the “Notices” and each a “Notice”) to Defendant concerning the exposure
7 of California citizens to DEHP and/or lead from use of the Products without proper warning,
8 subject to a private action to Defendant and to the California Attorney General’s office and the
9 offices of the County District attorneys and City Attorneys for each city with a population greater
10 than 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibits
11 “A” – “D” a true and correct copy of the Notices.

12 33. The Notices complied with all procedural requirements of Proposition 65 including
13 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
14 least one person with relevant and appropriate expertise who reviewed relevant data regarding
15 DEHP and/or lead exposure, and that counsel believed there was meritorious and reasonable cause
16 for a private action.

17 34. After receiving the Notices, and to Plaintiff’s best information and belief, none of
18 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
19 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
20 the subject of the Notices.

21 35. Plaintiff is commencing this action more than sixty (60) days from the date of the
22 Notices to Defendant, as required by law.

23 **FIRST CAUSE OF ACTION**

24 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

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

27 37. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
28 the Products.

1 38. Use of the Products will expose users and consumers thereof to DEHP and/or lead,
2 hazardous chemicals found on the Proposition 65 list of chemicals known to be hazardous to
3 human health.

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

5 40. Plaintiff, based on her best information and belief, avers that at all relevant times
6 herein, and at least since at least May 19, 2023 with respect to the *Subrtex*® home décor bags;
7 since at least August 8, 2023 with respect to the *Opaline*™ spa gift set bags and the Momentum
8 Brands bags; and since at least September 19, 2023 with respect to the *Martha White*® gluten free
9 blueberry muffin mixes, continuing until the present, that Defendant has continued to knowingly
10 and intentionally expose California users and consumers of the Products to DEHP and/or lead
11 without providing required warnings under Proposition 65.

12 41. The exposures that are the subject of the Notices result from the purchase,
13 acquisition, handling and recommended use of the Products. The primary route of exposure to
14 DEHP is through dermal absorption directly through the skin when consumers use, touch, or
15 handle the *Subrtex*® home décor bags, the *Opaline*™ spa gift set bags, and the Momentum Brands
16 bags. Exposure through ingestion will occur by touching the *Subrtex*® home décor bags, the
17 *Opaline*™ spa gift set bags, and the Momentum Brands bags with subsequent touching of the
18 user's hand to mouth. The primary route of exposure to lead is through ingestion. When foods
19 contaminated with lead are consumed, such as the *Martha White*® gluten free blueberry muffin
20 mixes, ingestion of lead will occur which will increase blood lead levels. No clear and reasonable
21 warning is provided with the Products regarding the health hazards of exposure.

22 42. Plaintiff, based on her best information and belief, avers that such exposures will
23 continue every day until clear and reasonable warnings are provided to purchasers and users or
24 until this known toxic chemical is removed from the Products.

25 43. Defendant has knowledge that the normal and reasonably foreseeable use of the
26 Products exposes individuals to DEHP and/or lead, and Defendant intends that exposures to DEHP
27 and/or lead will occur by their deliberate, non-accidental participation in the importation,
28 distribution, sale and offering of the Products to consumers in California

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

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

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
9 relief:

10 A. That the court assess civil penalties against defendant in the amount of \$2,500 per
11 day for each violation for up to 365 days in accordance with Health and Safety Code §
12 25249.7(b);

13 B. That the court preliminarily and permanently enjoin Defendant mandating
14 Proposition 65 compliant warnings on the Products;

15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
16 amount of \$50,000.00.

17 D. That the court grant any further relief as may be just and proper.

18 Dated: May 9, 2024

BRODSKY SMITH

19 By: 

20 Evan J. Smith (SBN242352)

21 Ryan P. Cardona (SBN302113)

22 9595 Wilshire Boulevard, Suite 900

23 Beverly Hills, CA 90212

24 Telephone: (877) 534-2590

25 Facsimile: (310) 247-0160

26 *Attorneys for Plaintiff*

EXHIBIT “A”

LAW OFFICES
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856.795.7250

NEW YORK OFFICE
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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

May 19, 2023

President/CEO Subrtex Houseware Inc. c/o Jian Wu 9935 Beverly Blvd., Unit 3 Pico Rivera, CA 90660	Member/Manager 99 Cents Only Stores, LLC c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203
Member/Manager 99 Cents Only Stores, LLC 4000 E. Union Pacific Avenue City of Commerce, CA 90023	President/CEO Max's Wholesale Import Export 2410 East 38 th Street, Vernon, CA 90058
President/CEO Max's Wholesale Import Export Inc. c/o Ronit Edry 6230 Wilshire Blvd., #59 Los Angeles, CA 90048	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. DESCRIPTION OF THE VIOLATION

- 1. Enforcer:** Precila Balabbo, 285 W. 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
- 2. Alleged Violator(s):** Subrtex Houseware, Inc.; 99 Cents Only Stores, LLC; Max’s Wholesale Import Export; Max’s Wholesale Import Export Inc.
- 3. Time Period of Exposure:** Violations have been occurring since at least May 19, 2023 and are continuing to this day.
- 4. Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
- 5. Product:**

Product ²	Non- Exclusive Examples of the Product
Bag	Subrtex Home Décor Bag X00263VCD

- 6. Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product 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 the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Balabbo has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “B”

LAW OFFICES
BRODSKY SMITH

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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

August 8, 2023

Member/Manager Opaline Solutions, LLC c/o Crystal Andasola 1506 N. Tamarack Drive Bayfield, CO 81122	Member/Manager Opaline Solutions, LLC 2130 West Sunset Surprise Court Tucson, AZ 85742
Member/Manager Max's Wholesale, LLC c/o Dennis Berkowitz 120 East Grand Avenue South San Francisco, CA 94080	Member/Manager 99 Cents Only Stores LLC c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203
Member/Manager 99 Cents Only Stores LLC 4000 Union Pacific Avenue City of Commerce, CA 90023	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Precila Balabbo, 285 W. 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Opaline Solutions, LLC; Max’s Wholesale, LLC; 99 Cents Only Stores LLC
3. **Time Period of Exposure:** Violations have been occurring since at least August 8, 2023 and are continuing to this day.
4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Gift Set Bag	Opaline Spa Gift Set Bag UPC# 692962190020

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product 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 the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

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Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Balabbo has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “C”

LAW OFFICES
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516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

August 8, 2023

Member/Manager 99 Cents Only Stores LLC c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203	Member/Manager 99 Cents Only Stores LLC 4000 Union Pacific Avenue City of Commerce, CA 90023
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60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

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Brodsky Smith represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

- 1. Enforcer:** Precila Balabbo, 285 W. 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
- 2. Alleged Violator(s):** 99 Cents Only Stores LLC
- 3. Time Period of Exposure:** Violations have been occurring since at least August 8, 2023 and are continuing to this day.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.

5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Bag	Momentum Brands Bag UPC# 018068166347

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product 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 the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEI11A at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Balabbo has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Balabbo's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “D”

LAW OFFICES
BRODSKY SMITH

9595 WILSHIRE BLVD., STE. 900
BEVERLY HILLS, CA 90212
877.534.2590
www.brodskysmith.com

NEW JERSEY OFFICE
1310 NORTH KINGS HIGHWAY
CHERRY HILL, NJ 08934
856.795.7250

NEW YORK OFFICE
240 MINEOLA BOULEVARD
MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

September 19, 2023

President/CEO Hometown Food Company c/o National Registered Agents Inc. 208 So. LaSalle St., Suite 814 Chicago, IL 60604-1101	President/CEO Hometown Food Company c/o National Registered Agents, Inc. 1209 Orange Street Wilmington, DE 19801
President/CEO Martha White Foods, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Member/Manager 99 Cents Only Stores LLC c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203
Member/Manager 99 Cents Only Stores LLC 4000 E. Union Pacific Avenue City of Commerce, CA 90023	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Precila Balabbo ("Balabbo"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Balabbo has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on

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whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Precila Balabbo, 285 6th Street, Unit 209, San Pedro, CA 90731; (Ph) 818-434-4023.
2. **Alleged Violator(s):** Hometown Food Company; Martha White Foods, Inc.; 99 Cents Only Stores LLC
3. **Time Period of Exposure:** Violations have been occurring since at least September 19, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Gluten free Blueberry Muffin Mix	Martha White Gluten Free Blueberry Muffin Mix UPC# 013300620124

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Balabbo against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have

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these violations of California law quickly rectified, Balabbo is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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Sincerely,



Evan J. Smith

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