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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

12/09/2024
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-24-620444**

12 GABRIEL ESPINOZA,
13 Plaintiff,

14 vs.

15 AMERICAN PET PRODUCTS, INC.,
16 PSP FRANCHISING, LLC, PSP
17 DISTRIBUTION, LLC, PSP GROUP,
18 LLC,

19 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

20 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following
21 cause 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 to enforce the People’s right to be informed of the health
hazards caused by exposure to lead, a toxic chemical found in *Play On*TM ceramic bowls, UPC #
750683108400 sold and/or distributed by defendants American Pet Products, Inc., PSP

1 Franchising, LLC, PSP Distribution, LLC, and/or PSP Group, LLC (collectively, “Defendants”
2 and each a “Defendant”) in California.

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

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

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

21 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
22 without a requisite exposure warning, *Play On*TM ceramic bowls, UPC # 750683108400 (the
23 “Products”) that expose persons to lead when used for their intended purpose.

24 7. Defendants’ failure to warn consumers and other individuals in California of the
25 health hazards associated with exposure to lead in conjunction with the sale and/or distribution of
26 the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
27 penalties described herein.

28

1 course of doing business within the meaning of Health & Safety Code sections 25249.6 and
2 25249.11.

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

8 **VENUE AND JURISDICTION**

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

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

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

24 **STATUTORY BACKGROUND**

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

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 October 1, 1992, the state of California listed lead as a chemical known to cause
11 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
12 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
13 1987, the State of California listed lead as a chemical known to cause birth defects or other
14 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
15 State to cause cancer and birth defects or other reproductive harm.

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

22 26. Defendants have processed, marketed, distributed, offered to sell and/or sold the
23 Products in California since at least February 2, 2024. The Products continue to be distributed and
24 sold in California without the requisite warning information.

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

1 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
2 violations allegedly occurred.

3 35. The Notice complied with all procedural requirements of Proposition 65 including
4 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
5 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead
6 exposure, and that counsel believed there was meritorious and reasonable cause for a private
7 action.

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

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

14 **FIRST CAUSE OF ACTION**

15 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

16 38. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 37 of
17 this Complaint as though fully set forth herein.

18 39. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
19 of the Product.

20 40. Use of the Products will exposed users to lead, a hazardous chemical found on the
21 Proposition 65 list of chemicals known to be hazardous to human health.

22 41. The Product does not comply with the Proposition 65 warning requirements.

23 42. Plaintiff, based on his best information and belief, avers that at all relevant times
24 herein, and at least since February 2, 2024, continuing until the present, that Defendants have
25 continued to knowingly and intentionally expose California users and consumers of the Product to
26 lead without providing required warnings under Proposition 65.

27 43. The exposures that are the subject of the Notice result from the purchase,
28 acquisition, handling and recommended use of the Product. The primary route of exposure to the

1 is through dermal absorption directly through the skin when consumers use, touch, or handle the
2 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
3 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
4 regarding the health hazards of exposure.

5 44. Plaintiff, based on his best information and belief, avers that such exposures will
6 continue every day until clear and reasonable warnings are provided to purchasers and users or
7 until this known toxic chemical is removed from the Products.

8 45. Defendants have knowledge that the normal and reasonably foreseeable use of the
9 Products exposes individuals to lead, and Defendants intend that exposures to lead will occur by
10 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
11 Products to consumers in California

12 46. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
13 Complaint.

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

17 48. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
18 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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PRAYER FOR RELIEF


WHEREFORE, Plaintiff demands judgment against Defendants and requests the following relief:

- A. That the court assess civil penalties against each Defendant in the amount of \$2,500 per day for each violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: December 9, 2024

BRODSKY SMITH

By: _____


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