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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

11/13/2024
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 ONE HUNDRED 80 DEGREES
DESIGN LLC, THE TJX COMPANIES,
INC.,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

CGC-24-619743

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

15 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
16 of action in the public interest of the citizens of the State of California.

17 **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 lead, a toxic chemical found in products sold and/or distributed by
27 defendants One Hundred 80 Degrees Design LLC and/or The TJX Companies, Inc. (collectively,
28 “Defendants” and each a “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.

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

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

15 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
16 without a requisite exposure warning, (a) Misha Zadeh 180 Degrees red flower mugs and/or (b)
17 180 Degrees ceramic dishes (collectively, the “Products” and each a “Product”) manufactured,
18 distributed, and/or sold by Defendants that expose persons to lead when used for their intended
19 purpose.

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

24
25
26 _____
27 ¹ On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and
28 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 Defendants conducted, and continue to conduct, business in the County of San Francisco with
2 respect to the Products.

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

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

14 **STATUTORY BACKGROUND**

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

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

22 No 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
24 first giving clear and reasonable warning to such individual...

25 19. An exposure to a chemical in a consumer product is one “which results from a
26 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
27 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
28 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...

1 shall provide a warning to any person to whom the product is sold or transferred unless the product
2 is packaged or labeled with a clear and reasonable warning.”

3 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
4 more of the following methods individually or in combination:²

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

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

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

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

16 21. Proposition 65 provides that any “person who violates or threatens to violate” the
17 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
18 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
19 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
20 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
21 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

22 **FACTUAL BACKGROUND**

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

26 _____
27 ² 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 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
2 1987, the State of California listed lead as a chemical known to cause birth defects or other
3 reproductive harm.

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

10 24. Defendants have processed, marketed, distributed, offered to sell and/or sold the
11 Products in California since at least February 22, 2024 with respect to the Misha Zadeh 180
12 Degrees red flower mugs; and since at least April 4, 2024 with respect to the 180 Degrees ceramic
13 dishes. The Products continue to be distributed and sold in California without the requisite warning
14 information.

15 25. At all times relevant to this action, Defendants have knowingly and intentionally
16 exposed users of the Products to lead without first giving a clear and reasonable exposure warning
17 to such individuals.

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

24 **SATISFACTION OF NOTICE REQUIREMENTS**

25 27. Plaintiff purchased the Products from The TJX Companies, Inc. At the time of
26 purchase, Defendants did not provide a Proposition 65 exposure warning for lead or any other
27 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
28 *supra*.

1 28. The Products were sent to a testing laboratory to determine if, and what amount of,
2 lead would migrate and/or leach from the Products.

3 29. For each Product that was sent to the laboratory, Plaintiff received a chemical test
4 report (collectively, the “Chemical Test Reports” and each a “Chemical Test Report”). The
5 Chemical Test Reports findings determined the Products expose users to lead.

6 30. Plaintiff provided each Chemical Test Report and each Product to an analytical
7 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable
8 and foreseeable use of the Products, exposure to lead will occur at levels that require Proposition
9 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
10 Code of Regulations.

11 31. Plaintiff received from the analytical chemist an exposure assessment report for the
12 Products that concluded that persons in California who use the Products will be exposed to levels
13 of lead that require a Proposition 65 exposure warning.

14 32. On February 22, 2024 (Misha Zadeh 180 Degrees red flower mugs) and April 4,
15 2024 (180 Degrees ceramic dishes), Plaintiff gave notice of alleged violation of Health and Safety
16 Code § 25249.6 (collectively, the “Notices” and each a “Notice”) to Defendants concerning the
17 exposure of California citizens to lead contained in the Products without proper warning, subject
18 to a private action to Defendants and to the California Attorney General’s office and the offices of
19 the County District attorneys and City Attorneys for each city with a population greater than
20 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibits “A” –
21 “B” a true and correct copy of the Notices.

22 33. The Notices complied with all procedural requirements of Proposition 65 including
23 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
24 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead
25 exposure, and that counsel believed there was meritorious and reasonable cause for a private
26 action.

27 34. After receiving the Notices, and to Plaintiff’s best information and belief, none of
28 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a

1 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
2 are the subject of the Notices.

3 35. Plaintiff is commencing this action more than sixty (60) days from the date of each
4 Notice to Defendants, as required by law.

5 **FIRST CAUSE OF ACTION**

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

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

9 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
10 of the Products.

11 38. Use of the Products will expose users to lead, a hazardous chemical found on the
12 Proposition 65 list of chemicals known to be hazardous to human health.

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

14 40. Plaintiff, based on her best information and belief, avers that at all relevant times
15 herein, and since at least February 22, 2024 with respect to the Misha Zadeh 180 Degrees red
16 flower mugs; and since at least April 4, 2024 with respect to the 180 Degrees ceramic dishes,
17 continuing until the present, that Defendants have continued to knowingly and intentionally expose
18 California users and consumers of the Products to lead without providing required warnings under
19 Proposition 65.

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

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

1 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
2 Products expose individuals to lead, and Defendants intend that exposures to lead will occur by its
3 deliberate, non-accidental participation in the importation, distribution, sale and offering of the
4 Products to consumers in California.

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

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against each Defendant and requests the
3 following 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 each 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: November 13, 2024

BRODSKY SMITH

13 By:  _____

14 Evan J. Smith (SBN242352)
15 Ryan P. Cardona (SBN302113)
16 9465 Wilshire Boulevard, Suite 300
17 Beverly Hills, CA 90212
18 Telephone: (877) 534-2590
19 Facsimile: (310) 247-0160

Attorneys for Plaintiff

EXHIBIT "A"

LAW OFFICES
BRODSKY SMITH

9595 WILSHIRE BLVD., STE. 900
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www.brodskysmith.com

NEW JERSEY OFFICE
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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

February 22, 2024

Member/Manager One Hundred 80 degrees design LLC 514 E. 60 th Street Minneapolis, MN 55419	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO The TJX Companies, Inc. dba TJ Maxx c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO The TJX Companies, Inc. c/o CT Corporation System 101 Federal Street Boston, MA 02110

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 Ema Bell ("Bell"), 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, Bell 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:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
- 2. **Alleged Violator(s):** One Hundred 80 degrees design LLC; The TJX Companies, Inc.; The TJX Companies, Inc. dba TJ Maxx
- 3. **Time Period of Exposure:** Violations have been occurring since at least February 22, 2024 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
Mug	Misha Zadeh 180 Degrees Red Flower Mug UPC# 8 44828 19249 9

- 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 Bell 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, Bell 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 Bell'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.

Bell 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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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

April 4, 2024

Member/Manager One Hundred 80 degrees design LLC 514 E. 60 th Street Minneapolis, MN 55419	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO The TJX Companies, Inc. dba TJ Maxx c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO The TJX Companies, Inc. c/o CT Corporation System 101 Federal Street Boston, MA 02110

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With respect to the Product herein, Bell 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.

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2. **Alleged Violator(s):** One Hundred 80 degrees design LLC; The TJX Companies, Inc.; The TJX Companies, Inc. dba TJ Maxx
3. **Time Period of Exposure:** Violations have been occurring since at least April 4, 2024 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
Ceramic Dish	Ceramic Dish 844828136424

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.

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Sincerely,



Evan J. Smith

Attachments

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Certificate of Service

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