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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

04/09/2025
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 WALMART INC.,
15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

CGC-25-624200

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

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

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
22 “[n]o 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 without first giving clear and reasonable
24 warning to such individual ...”. Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in mascaras
28 manufactured, sold, and/or distributed by THG Luxury Ltd., THG PLC (collectively, “THG”),
and/or Cend International Ltd., and sold by defendant Walmart Inc. in California.

1 3. DEA is a harmful chemical known to the State of California to cause cancer. On
2 June 22, 2012, the State of California listed DEA as a chemical known to the State to cause cancer
3 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.
4 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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 (up to a maximum civil penalty amount per violation of \$912,000.00) to be
13 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
14 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
15 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
16 25249.7.

17 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
18 without a requisite exposure warning, mascaras manufactured, sold, and/or distributed by THG
19 and/or Cend International Ltd. (the “Products”) that expose persons to DEA when used for their
20 intended purpose.

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

25 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65
26 in accordance with Health and Safety Code § 25249.7(b).

1 of California, and/or has otherwise purposefully availed itself of the California market. Such
2 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
3 permissible with traditional notions of fair play and substantial justice.

4 STATUTORY BACKGROUND

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

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

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

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

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

23 a. A warning that appears on a product’s label or other labeling.
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27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 24. At all times relevant to this action, Defendant has knowingly and intentionally
2 exposed users of the Products to DEA without first giving a clear and reasonable exposure warning
3 to such individuals.

4 25. As a proximate result of acts by Defendant, as a person in the course of doing
5 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
6 California, including in San Francisco County, have been exposed to DEA without a clear and
7 reasonable warning on the Products. The individuals subject to the violative exposures include
8 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
9 the Products.

10 SATISFACTION OF NOTICE REQUIREMENTS

11 26. Plaintiff purchased the Product from Walmart Inc. At the time of purchase,
12 Defendant did not provide a Proposition 65 exposure warning for DEA or any other Proposition
13 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

14 27. The Product was sent to a testing laboratory for diethanolamine to determine the
15 DEA content of the Product.

16 28. The laboratory provided the results of its analysis. Results of this test determined
17 the Product exposes users to DEA (the “Chemical Test Report”).

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

23 30. On April 17, 2024, Plaintiff received from the analytical chemist an exposure
24 assessment report which concluded that persons in California who use the Products will be exposed
25 to levels of DEA that require a Proposition 65 exposure warning.

26 31. On April 17, 2024, Plaintiff gave notice of alleged violation of Health and Safety
27 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to DEA
28 from use of the Products without proper warning, subject to a private action to Defendant and to

1 the California Attorney General's office and the offices of the County District attorneys and City
2 Attorneys for each city with a population greater than 750,000 persons wherein the herein
3 violations allegedly occurred.

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

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

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

15 **FIRST CAUSE OF ACTION**

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

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

19 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
20 the Products.

21 37. Use of the Products will expose users and consumers thereof to DEA, a hazardous
22 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

23 38. The Products do not comply with the Proposition 65 warning requirements.

24 39. Plaintiff, based on her best information and belief, avers that at all relevant times
25 herein, and at least since April 17, 2024, continuing until the present, that Defendant has continued
26 to knowingly and intentionally expose California users and consumers of the Products to DEA
27 without providing required warnings under Proposition 65.

1 40. The exposures that are the subject of the Notice result from the purchase,
2 acquisition, handling and recommended use of the Product. The primary route of exposure to DEA
3 is through dermal exposure. Some amount of exposure through ingestion can occur by touching
4 the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning
5 is provided with the Products regarding the health hazards of exposure to DEA.

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

9 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
10 Products exposes individuals to DEA, and Defendant intends that exposures to DEA will occur by
11 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
12 Products to consumers in California

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

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

17 45. 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 Defendant.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
3 relief:

4 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per
5 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 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: April 9, 2025

BRODSKY SMITH

13 By:  _____

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