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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**01/15/2025**  
**Clerk of the Court**  
BY: SAHAR ENAYATI  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

EMA BELL,

Plaintiff,

vs.

DELSEY LUGGAGE, INC.,

Defendant.

Case No.:

**CGC-25-621456**  
**COMPLAINT FOR CIVIL PENALTIES AND**  
**INJUNCTIVE RELIEF**

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

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

**BACKGROUND OF THE CASE**

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part, "[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 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California against defendant Delsey Luggage, Inc. ("Delsey" or "Defendant") to enforce the People's right to be informed of the health hazards caused by exposure

1 to bisphenol A (BPA) from the use of Delsey Chatelet Air beauty cases that are manufactured,  
2 distributed, offered for sale and/or sold by Defendant in California.

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

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

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

19 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
20 without a requisite Proposition 65 exposure warning, Delsey Chatelet Air beauty cases (the  
21 “Products”) that expose persons to BPA when used as intended and/or for its intended purpose.

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

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

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendant to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to BPA from use of the Products pursuant to Health and Safety Code § 25249.7(a).

## PARTIES

12. Defendant Delsey Luggage, Inc., through its business, effectively imports, distributes, sells and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Delsey Luggage, Inc. is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

## VENUE AND JURISDICTION

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

15. This Court has jurisdiction over Defendant because Defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State

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/or 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:<sup>1</sup>

23 a. A warning that appears on a product’s label or other labeling.  
24  
25  
26

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27 <sup>1</sup> 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.

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

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

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

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

## FACTUAL BACKGROUND

21. On May 11, 2015, the State of California listed BPA as a chemical known to the State to cause birth defects or other reproductive harm and BPA 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).

22. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to BPA is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Exposure through ingestion will 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.

23. Defendant has distributed, offered to sell and/or sold the Products in California since at least June 20, 2024. The Products continue to be distributed and sold in California without a requisite Proposition 65 compliant BPA exposure warning.

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

25. As a proximate result of Defendant's actions, and as a person in the course of doing business within the meaning of H&S Code § 25249.11, individuals throughout the State of California, including in San Francisco County, have been exposed to BPA from use of the Products without having first been provided a clear and reasonable exposure warning. The individuals subject to the violative exposures include normal and foreseeable users and consumers that use the Products.

## SATISFACTION OF NOTICE REQUIREMENTS

26. On April 24, 2024, Plaintiff purchased the Product from Sunsations Luggage in California. At the time of purchase, Defendant did not provide a Proposition 65 exposure warning for BPA or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

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

28. On May 22, 2024, the laboratory provided the results of its analysis. Results of this test concluded the Products expose users to BPA (the “Chemical Test Report”).

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

30. On June 20, 2024, Plaintiff received from the analytical chemist an exposure assessment report which concluded that persons in California who use the Products will be exposed to levels of BPA that require a Proposition 65 exposure warning.

31. On June 20, 2024, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to BPA from use of the Products without proper warning, subject to a private action to Defendant and to the California Attorney General’s office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

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

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

**FIRST CAUSE OF ACTION**

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

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

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

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

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

2           39.     Plaintiff, based on her best information and belief, avers that at all relevant times  
3 herein, and at least since June 20, 2024, continuing until the present, that Defendant has continued  
4 to knowingly and intentionally expose California users and consumers of the Products to BPA  
5 without providing required warnings under Proposition 65.

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

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

15          42.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
16 Product exposes individuals to BPA, and Defendant intends those exposures to BPA will occur by  
17 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
18 Products to consumers in California.

19          43.     Plaintiff has engaged in good faith efforts to resolve the herein claims prior to the  
20 filing of the complaint.

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

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



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: January 15, 2025

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