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CGC-26-636346

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

9 PRECILA BALABBO,

10 Plaintiff,

11 vs.

12 CVS PHARMACY, INC.,

13 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

16 **BACKGROUND OF THE CASE**

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

23 2. This complaint is a representative action brought by Plaintiff in the public interest
24 of the citizens of the State of California to enforce the People’s right to be informed of the health
25 hazards caused by exposure to lead, a toxic chemical found in Well Market veggie straws sold,
26 and/or distributed by defendant CVS Pharmacy, Inc. (“CVS” or “Defendant”) in California.

27 3. Lead is a harmful chemical known to the State of California to cause cancer and
28 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as

1 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations
2 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
3 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to
4 cause 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, Well Market veggie straws (the “Products”) that expose
18 persons to lead when consumed for their intended purpose.

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

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

25 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
26 Defendant to provide purchasers or consumers of the Products with required warnings related to
27 the dangers and health hazards associated with exposure to lead pursuant to Health and Safety
28 Code § 25249.7(a).

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

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

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

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

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

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

20 22. Pursuant to Cal. Code Regs. Tit. 27, § 25600.2(e), a retail seller is responsible for
21 providing the warning required by § 25249.6 of the Act for a consumer product exposure when
22 one or more of the following circumstances exist: (a) the retailer seller is selling the product under
23 a brand or trademark that is owned or licensed by the retail seller or an affiliated entity; (b) the
24 retailer seller has knowingly introduced a listed chemical into the product, or knowingly caused
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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 the listed chemical to be created in the product; (c) the retail seller has covered, obscured or altered
2 a warning label that has been affixed to the product pursuant to § 25600.2(b); (d) the retail seller
3 has received a notice and warning materials for the exposure pursuant to § 25600.2(b)-(c) and the
4 retail seller has sold the product without conspicuously posting or displaying the warning; or (e)
5 the retailer seller has actual knowledge of the potential consumer product exposure requiring the
6 warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the
7 product who: (i) is a “person in the course of doing business under § 25249.11(b) of the Act, and
8 (ii) has designated an agent for service of process in California, or has a place of business in
9 California.

10 FACTUAL BACKGROUND

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

17 24. On April 11, 2025, Plaintiff purchased the Product from Defendant. At the time of
18 the purchase, Defendant did not provide a clear and reasonable exposure warning pursuant to Cal.
19 Code Regs. Tit. 27, § 25602.

20 25. On May 28, 2025, Plaintiff served notice of alleged violation of Health and Safety
21 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to lead
22 from consumption of the Products without proper warning, subject to a private action to Defendant
23 and to the California Attorney General’s office and the offices of the County District attorneys and
24 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
25 violations allegedly occurred. The exposures that are the subject of the Notice result from the
26 purchase, acquisition, handling and recommended consumption of the Product. The primary route
27 of exposure to lead is through ingestion. When foods contaminated with lead are consumed,
28

1 ingestion of lead will occur which will increase blood lead levels. No clear and reasonable warning
2 is provided with the Products regarding the health hazards of exposure.

3 26. On June 13, 2025, Plaintiff provided Defendant with further notice concerning the
4 exposure of California citizens to lead from consumption of the Products without proper warning,
5 subject to a private action to Defendant and to the California Attorney General’s office and the
6 offices of the County District attorneys and City Attorneys for each city with a population greater
7 than 750,000 persons wherein the herein violations allegedly occurred.

8 27. Defendant has actual knowledge that sales of the Product in California will result
9 in an actionable consumer product exposure pursuant to Cal. Health & Safety Code § 25249.5 et
10 seq.

11 28. Defendant has sold the Product under a brand or trademark that is owned or licensed
12 by Defendant or an affiliated entity; and/or Defendant has knowingly introduced lead into the
13 Product, or knowingly caused lead to be created in the Product; and/or Defendant has covered,
14 obscured or altered a warning label that has been affixed to the Product pursuant to § 25600.2(b);
15 and/or Defendant has received a notice and warning materials for the exposure pursuant to §
16 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or displaying
17 the warning; and/or Defendant has actual knowledge of the potential consumer product exposure
18 requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or
19 distributor of the Product who: (i) is a “person in the course of doing business under § 25249.11(b)
20 of the Act, and (ii) has designated an agent for service of process in California, or has a place of
21 business in California.

22 29. At all times relevant to this action, Defendant has knowingly and intentionally
23 exposed consumers of the Products to lead without first giving a clear and reasonable exposure
24 warning to such individuals. More than five business days after receipt of the Notice of Violation,
25 Defendant continued to distribute, sell, and/or offer to and sell in California without the requisite
26 warning information.

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

4 38. 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 lead
7 exposure, and that counsel believed there was meritorious and reasonable cause for a private
8 action.

9 39. 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 40. 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 41. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 40 of
18 this Complaint as though fully set forth herein.

19 42. Defendant has manufactured, processed, marketed, distributed, offered to sell
20 and/or sold the Products in California since at least April 11, 2025.

21 43. On May 28, 2025, Plaintiff served the Notice on Defendant concerning the
22 exposure of California citizens to lead from consumption of the Products without proper warning,
23 subject to a private action to Defendant and to the California Attorney General's office and the
24 offices of the County District attorneys and City Attorneys for each city with a population greater
25 than 750,000 persons wherein the herein violations allegedly occurred.

26 44. The Notice gives Defendant actual knowledge of the potential consumer product
27 exposure requiring the warning pursuant to Cal. Code Regs, Tit. 27, § 25600.2. Consumption of
28

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

3 45. The Products do not comply with the Proposition 65 warning requirements.

4 46. Plaintiff, based on her best information and belief, avers that at all relevant times
5 herein, and at least since May 28, 2025, continuing until the present, that Defendant has continued
6 to knowingly and intentionally expose California users and consumers of the Products to lead
7 without providing required warnings under Proposition 65.

8 47. Defendant continues to sell the Product under a brand or trademark that is owned
9 or licensed by Defendant or an affiliated entity; and/or Defendant has knowingly introduced lead
10 into the Product, or knowingly caused lead to be created in the Product; and/or Defendant has
11 covered, obscured or altered a warning label that has been affixed to the Product pursuant to §
12 25600.2(b); and/or Defendant has received a notice and warning materials for the exposure
13 pursuant to § 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or
14 displaying the warning; and/or Defendant has actual knowledge of the potential consumer product
15 exposure requiring the warning, and there is no manufacturer, producer, packager, importer,
16 supplier, or distributor of the Product who: (i) is a “person in the course of doing business under §
17 25249.11(b) of the Act, and (ii) has designated an agent for service of process in California, or has
18 a place of business in California

19 48. On February 15, 2026, more than five business days after Defendant received the
20 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did
21 not provide a Proposition 65 compliant exposure warning.

22 49. The exposures that are the subject of the Notice result from the purchase,
23 acquisition, handling and recommended consumption of the Product. The primary route of
24 exposure to lead is through ingestion. When foods contaminated with lead are consumed, ingestion
25 of lead will occur which will increase blood lead levels. No clear and reasonable warning is
26 provided with the Products regarding the health hazards of exposure.

1 50. Plaintiff, based on her best information and belief, avers that such exposures will
2 continue every day until clear and reasonable warnings are provided to purchasers and consumers
3 or until this known toxic chemical is removed from the Products.

4 51. Defendant has knowledge that the normal and reasonably foreseeable consumption
5 of the Products exposes individuals to lead, and Defendant intends that exposures to lead will occur
6 by their deliberate, non-accidental participation in the importation, distribution, sale and offering
7 of the Products to consumers in California.

8 52. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
9 Complaint.

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

12 54. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
13 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 in accordance with Health and Safety Code §
6 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 27, 2026

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