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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ALAMEDA**

12 MERCURY POLICY PROJECT, a Project of
13 the Tides Center, a 501(c)(3) nonprofit
14 corporation,

15 Plaintiff,

16 vs.

17 POSHMARK, INC.,

18 Defendant.

Case No. **26CV203979**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES AND
OTHER EQUITABLE RELIEF FOR
VIOLATIONS OF PROPOSITION 65
(HEALTH & SAFETY CODE 25249.6, et
seq.)**

1. Plaintiff MERCURY POLICY PROJECT (“**MPP**”) brings this action pursuant to California’s Proposition 65, Health & Safety Code section 25249.6 et seq. MPP seeks to enjoin Defendant Poshmark, Inc. (“**Poshmark**”) from posting on Poshmark.com for sale into California skin-lightening, whitening, and/or brightening cosmetics containing 1 ppm or more mercury or mercury compounds (the “**Products**” and mercury and mercury compounds collectively, “**Mercury**”). MPP also seeks civil penalties for failure to warn as required by Proposition 65 and other appropriate relief.

Venue and Jurisdiction

2. This Court has subject matter jurisdiction over this action pursuant to Health and Safety Code section 25249.7, subdivision (a) which allows enforcement of Proposition 65 in any court of competent jurisdiction, and pursuant to California Constitution, article VI, section 10, because this case does not present a cause given by statute to other courts.

3. This court has personal jurisdiction over Poshmark because Poshmark has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market.

4. MPP has met the statutory requirements for notice to bring this citizen suit enforcement action under Health and Safety Code section 25249.7 and its implementing regulations, including providing, on May 28, 2026, notice of intent to sue.

5. Venue is proper in the Superior Court of California, County of Alameda, pursuant to Code of Civil Procedure sections 393 and 395, because this court is a court of competent jurisdiction, because MPP seeks civil penalties against Poshmark, because one or more instances of wrongful conduct occurred and continue to occur in the County of Alameda, and/or because Poshmark conducted and continues to conduct business in this county with respect to the Products.

Parties

6. MPP brings this action as private attorney general in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d).

7. Poshmark is a business entity with ten or more employees doing business in California for purposes of Proposition 65 under Health & Safety Code section 25249.11, and has caused unwarned California consumer exposures to Mercury from the reasonably foreseeable use of Products sold on the website operated by Poshmark at Poshmark.com.

Statutory and Regulatory Background

8. In 1986, “Proposition 65” was enacted as the Safe Drinking Water and Toxic Enforcement Act by an overwhelming majority of voters as a “remedial statute intended to protect the public.” (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal. 4th 294, 314.)

9. Proposition 65 declares it is the People’s right to be “informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” (Health & Saf. Code Div. 20, Ch. 6.6 Note, § 1, subd. (b).)

10. To effectuate this purpose, Proposition 65 provides that:

No 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, except as provided in section 25249.10.

(Health & Saf. Code, § 25249.6.)

11. Any person who violates Proposition 65 is liable for civil penalties not to exceed \$2,500 per day for each violation, recoverable in a civil action. (Health & Saf. Code, § 25249.7, subd. (b).)

12. Private parties are entitled to bring an action in the public interest to enforce Proposition 65 under Health and Safety Code, section 25249.7, subdivision (d).

General Allegations of Fact

13. The Food and Drug Administration (“FDA”) has warned against the use of mercury in cosmetics since 1973 due to ease of exposure and bioaccumulation:

It is well known that mercury compounds are readily absorbed through the unbroken skin as well as through the lungs by inhalation and by intestinal absorption after ingestion. Mercury is absorbed from

1 topical application and is accumulated in the body, giving rise to
2 numerous adverse effects Cosmetic preparations containing
3 mercury compounds are often applied with regularity and frequency
4 for prolonged periods. Such chronic use of mercury-containing skin-
bleaching preparations has resulted in the accumulation of mercury in
the body and the occurrence of severe reactions.

5 (21 C.F.R. § 700.13(b).) The FDA bans mercury in cosmetics in amounts greater than 1 part per
6 million. (21 C.F.R. § 700.13(d)(2) (1974).)

7 14. On July 1, 1990, the California Office of Environmental Health Hazard Assessment
8 identified and listed “mercury and mercury compounds” as chemicals known to the State of
9 California to cause developmental toxicity, pursuant to Proposition 65. Mercury and mercury
10 compounds became subject to the “clear and reasonable warning” requirement of Proposition 65
11 one year later on July 1, 1991. (Health & Saf. Code, §§ 25249.8, 25249.10, subd. (b); Cal. Code
12 Regs, tit. 27, § 27001, subd. (c).)

13 15. The dangers of the Products, accordingly, are well known as multiple health and
14 safety agencies across the globe have regularly issued health alerts, announced investigation into,
15 and advised consumers to beware of use of the Products, including those sold on Poshmark, because
16 of the risk of exposure to dangerously high levels of Mercury.

17 16. MPP notified Poshmark in a letter dated March 3, 2026, of the dangers of Products
18 listed on Poshmark.com and, therefore, since at least that time Poshmark has had actual knowledge
19 of the Mercury content of the Products and their danger to California consumers.

20 17. Testing has shown that Products sold into California on Poshmark.com contain
21 significant levels of Mercury, far in excess of what is allowed by the FDA.

22 18. Since at least 2023 and continuing each day through the present, Poshmark has, in
23 the course of doing business, knowingly facilitated the sale into California the Products on its
24 website, Poshmark.com.

25 19. The Products are designed and marketed specifically to be applied directly to the
26 skin.

1 20. The reasonably foreseeable use of the Products causes people in the State of
2 California and members of their households to be exposed to Mercury through three primary routes:
3 dermal absorption, ingestion, or inhalation.

4 21. Dermal absorption occurs with each reasonably foreseeable application of a Product
5 to the user's skin.

6 22. Ingestion occurs post-application as a result of reasonably foreseeable and normal
7 hand-to-mouth behavior, such as eating or preparing food.

8 23. Inhalation occurs when mercury vaporizes from the creams.

9 24. Such exposure is continuing and ongoing because Mercury has a long half-life in the
10 human body.

11 25. Additionally, the Products are each multi-use, resulting in multiple exposures, and
12 therefore multiple Proposition 65 violations, in the normal course of use of each unit sold into
13 California.

14 26. Poshmark knew or should have known that the Products offered for sale on its
15 website contain Mercury.

16 27. Poshmark has not provided a warning that complies with Proposition 65 to any
17 consumer of a Product.

18 28. No other party has provided any warning compliant with Proposition 65 for any
19 Product sold on Poshmark.com.

20 29. On March 3, 2026, MPP sent Poshmark a letter, which asked Poshmark to stop
21 marketing illegal mercury added cosmetics on its website, suggested specific ways to do so, and
22 attached a list of known Products.

23 30. On May 28, 2026, MPP sent a Notice of Violation (“**Notice**”) to Poshmark meeting
24 all requirements of Health & Safety Code section 25249.7, subdivision (d), including providing the
25 Attorney General with a certificate of merit.

1 31. Based on information and belief of MPP's attorneys, no public prosecutor has
2 commenced and is diligently prosecuting an action against the violations at issue herein, and the
3 notice period provided in Health and Safety Code section 25249.7 has elapsed.

4 **First Cause of Action**

5 **(Violation of Health & Safety Code § 25249.6)**

6 32. MPP realleges and incorporates each and every allegation contained in the preceding
7 paragraphs as though fully set forth herein.

8 33. Under Proposition 65:

9 No person in the course of doing business shall knowingly and
10 intentionally expose any individual to a chemical known to the state
11 to cause cancer or reproductive toxicity without first giving clear and
12 reasonable warning to such individual, except as provided in section
25249.10.

13 (Health & Saf. Code, § 25249.6.)

14 34. Poshmark, in the course of doing business in California, has violated Health and
15 Safety Code section 25249.6 by knowingly and intentionally exposing California consumers to
16 mercury or mercury compounds without first providing a clear and reasonable warning to these
17 individuals who were or who shall become exposed to Mercury through dermal contact, ingestion,
18 and/or inhalation during the reasonably foreseeable uses of the Products.

19 35. Poshmark has violated and continues to violate California Code of Regulations, Title
20 27, section 25602, subdivision (b) because neither Poshmark, nor anyone else, has ever provided a
21 Proposition 65 warning in any non-English language used on the labels for the Products on its
22 website.

23 **Prayer For Relief**

24 36. WHEREFORE, Plaintiff prays the Court:
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26
27

1 A. Grant civil penalties pursuant to Health and Safety Code section 25249.7,
2 subdivision (b)(1) against Poshmark in the amount of up to \$2,500 per day for each unwarned
3 exposure through use of a Product sold into California as a result of listing on Poshmark.com;

4 B. Enter such injunctions or other orders as are necessary pursuant to Health and
5 Safety Code section 25249.7, subdivision (a) to prevent Poshmark from exposing persons within the
6 state of California to Mercury without providing clear and reasonable warnings;

7 C. Award MPP reasonable attorneys' fees and costs pursuant to Code of Civil
8 Procedure, section 1021.5 and as otherwise appropriate; and

9 D. Grant such other and further relief as may be just and proper.

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11 Dated: August 10, 2026

Respectfully Submitted,

12
13 By:



GREENFIRE LAW, PC

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William R. Fortna

Attorneys for Mercury Policy Project