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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
12 Plaintiff,

13 v.

14 NOTIONS MARKETING, CORP.,
15 Defendant.

Case No.:

17869263

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

17 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
18 alleges the following cause of action in the public interest of the citizens of the State of
19 California.

BACKGROUND OF THE CASE

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

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Sec
4 Your Stuff Storage Bags sold and/or distributed by defendant Notions Marketing Corp.
5 (“Notions” or “Defendant”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
8 known to the State to cause cancer and it has come under the purview of Proposition 65
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
11 known to cause reproductive toxicity.

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

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
20 the actions of a defendant which “violate[s] or threaten[s] to violate” the statute. Health &
21 Safety Code § 25249.7.

22 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
23 and/or offers for sale, without the required warning, See Your Stuff Storage Bags, UPC No. 7
24 66516 14001 1 (“Product” or “Products”) in California containing DEHP.

25 7. Defendant’s failure to warn consumers and other individuals in California of the
26 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
27 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the
28 enjoinder and civil penalties described herein.

1 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
2 and/or retailer of the Product.

3 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65
4 list of chemicals known to be hazardous to human health.

5 23. The Product does not comply with the Proposition 65 warning requirements.

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since September 1, 2016, continuing until the present, that Notions has
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DEHP without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of the Notice result from the purchase,
11 acquisition, handling and recommended use of the product. . Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can
13 occur through direct skin contact with the clear window of the zippered pouch during routine use
14 when the pouch is grasped, opened, or manipulated with bare hands, which can result in an
15 increased exposure risk to the user, which may include both children and adults. The clear
16 window can be expected to emit gas phase DEHP into the air over the lifetime of the product.
17 Concentrations of gas phase DEHP can be expected to build within the small, enclosed interior
18 of the pouch. This gas phase DEHP can potentially be absorbed to the surface of the interior
19 contents of the pouch which can include any number of small items. When handled, these items
20 can provide an indirect source of dermal transfer of DEHP to the user's bare hands. If the pouch
21 is stored or transported in a carrier, or a drawer, DEHP that leaches from the pouch may
22 contaminate other articles contained within the carrier bag or drawer that are subsequently
23 handled by the user. Finally, while mouthing of the product does not seem likely, some amount
24 of exposure through ingestion can occur by touching the product with subsequent touching of the
25 user's hand to mouth, or if the interior contents should become contaminated with DEHP that has
26 leached from the clear window and these contents subsequently come into contact with the user's
27 mouth or are ingested.

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