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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 16 2017

CLERK OF THE SUPERIOR COURT,  
By Lanette Buffin, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

11 GABRIEL ESPINOSA,

12 Plaintiff,

13 v.

14 HUFFY CORP.,

15 Defendant.

Case No.:

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

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

19 BACKGROUND OF THE CASE

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People's right to be informed of the health  
28

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
2 Huffy Handlebar Bags manufactured, sold and/or distributed in California by defendant Huffy  
3 Corp. (“Huffy” or “Defendant”) in California.

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

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
21 and/or offers for sale in California, without the required warning, Huffy Handlebar Bags,  
22 including but not limited to SKU No. 0 32447 00411 2 (“Product” or “Products”), that contain  
23 DEHP.

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

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8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65 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 Product with the required warnings related to the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code § 25249.7(a).

**PARTIES**

10. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items. He brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Huffy sells and distributes bicycles and cycling gear. Through its business, Huffy effectively manufactures, 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 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

12. Defendant Huffy 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

13. Venue is proper in the County of Alameda because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendant conducted, and continues to conduct, business in the County of Alameda with respect to the Product.

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.

1           15.     This Court has jurisdiction over Defendant because it is either a citizen of the  
2 State of California, has sufficient minimum contacts with the State of California, is registered  
3 with the California Secretary of State as foreign corporations authorized to do business in the  
4 State of California, and/or has otherwise purposefully availed itself of the California market.  
5 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
6 consistent and permissible with traditional notions of fair play and substantial justice.

7                               **SATISFACTION OF NOTICE REQUIREMENTS**

8           16.     On March 15, 2017, Plaintiff gave notice of alleged violation of Health and Safety  
9 Code § 25249.6 (the "Notice") to Huffy concerning the exposure of California citizens to DEHP  
10 contained in the Product without proper warning, subject to a private action to Huffy and to the  
11 California Attorney General's office and the offices of the County District attorneys and City  
12 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
13 violations allegedly occurred.

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

19           18.     After receiving the Notice, and to Plaintiff's best information and belief, none of  
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
21 a cause of action against Huffy under Proposition 65 to enforce the alleged violations which are  
22 the subject of Plaintiff's notice of violation.

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

25                               **FIRST CAUSE OF ACTION**

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

27           20.     Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of  
28 this complaint as though fully set forth 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 February 11, 2017, continuing until the present, that Huffy 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 exposure. The potential exists for dermal  
13 exposure of DEHP and DINP through direct contact with the user's bare hands and the clear  
14 touchscreen when a smartphone is inserted or removed from the pocket. The product can be  
15 expected to emit gas phase DEHP into the air over the lifetime of the product. If the handlebar  
16 cooler bag is stored in a closed drawer or carrier, DEHP that leaches from the touchscreen  
17 window may contaminate other articles contained within the drawer or carrier that are  
18 subsequently handled, used, or consumed by people. If the handlebar cooler bag is exposed to  
19 moisture or humidity, DEHP skin permeation rates have been reported to be faster than neat  
20 DEHP permeation. Finally, while mouthing of the product does not seem likely, some amount of  
21 exposure through ingestion can occur by touching the product with subsequent touching of the  
22 user's hand to mouth, through touching the DEHP contaminated smartphone screen after it is  
23 removed from the pocket with subsequent touching of the user's hand to mouth, or if the phone  
24 surface is contaminated with DEHP and comes into contact with the user's mouth during use.

25          26. Plaintiff, based on his best information and belief, avers that such exposures will  
26 continue every day until clear and reasonable warnings are provided to Product purchasers and  
27 users or until this known toxic chemical is removed from the Product.

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27. Defendant has knowledge that the normal and reasonably foreseeable use of the Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Product to consumers in California

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

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

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


### PRAYER FOR RELIEF

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

- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: May 16, 2017

BRODSKY &amp; SMITH, LLC

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*Attorneys for Plaintiff*