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MARGARET J. DOWNIT

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA

9 ANTHONY FERREIRO,
10 Plaintiff,
11 v.
12 NTR, INC.,
13 Defendant.
14

Case No.: **RG18896237**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

15
16 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the
17 following cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
28

EX-1A

1 Canyonwerks bags (the “Products”) sold and/or distributed for sale in California by defendant
2 NTR, Inc. (“NTR” or “Defendant”).

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

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

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

19 6. Plaintiff alleges that Defendant imports, distributes, sells and/or offers for sale in
20 California, without the required Proposition 65 exposure warning, the Products that contain
21 DEHP.

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

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

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

5 **PARTIES**

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

10 11. Defendant NTR, through its business, effectively imports, distributes, sells, and/or
11 offers the Products for sale or use in the State of California, or it implies by its conduct that it
12 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
13 California.

14 12. Defendant NTR is alleged to be a “person” in the course of doing business within
15 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

16 **VENUE AND JURISDICTION**

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

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

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

1 State of California, and/or has otherwise purposefully availed itself of the California market.
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

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

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

22 **FIRST CAUSE OF ACTION**

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

24 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
25 this complaint as though fully set forth herein.

26 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
27 and/or retailer of the Products.

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1 22. The Products contain DEHP, a hazardous chemical found on the Proposition 65
2 list of chemicals known to be hazardous to human health.

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

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since October 10, 2017, continuing until the present, that NTR has continued
6 to knowingly and intentionally expose California users and consumers of the Products to DEHP
7 without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of the Notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
11 DEHP and DINP by dermal absorption through direct handling of the DEHP and DINP
12 containing plastic during placement and removal of items from the bag. If the plastic becomes
13 wet, or is handled with wet hands, aqueous DEHP skin permeation rates have been reported to be
14 faster than neat DEHP permeation. If the bag is stored or transported in a carrier, DEHP and
15 DINP that leaches from the plastic may contaminate other articles contained within the storage
16 area or carrier that are subsequently handled, worn, mouthed, or ingested by the user. Finally,
17 some amount of exposure through ingestion can occur by handling the product with subsequent
18 touching of the user's hand to mouth.

19 26. Plaintiff, based on his best information and belief, avers that such exposures will
20 continue every day until clear and reasonable warnings are provided to the purchasers and users
21 of the Products, or until these known toxic chemicals are removed from the Products.

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

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

28

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

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


5 **PRAYER FOR RELIEF**

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

- 8 A. That the court assess civil penalties against Defendant in the amount of
- 9 \$2,500 per day for each violation in accordance with Health and Safety
- 10 Code § 25249.7(b);
- 11 B. That the court preliminarily and permanently enjoin Defendant mandating
- 12 Proposition 65 compliant warnings on the Product;
- 13 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 14 D. That the court grant any further relief as may be just and proper.

15 Dated: March 9, 2018

BRODSKY & SMITH, LLC

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