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ENDORSED  
FILED  
ALAMEDA COUNTY  
APR 11 2018  
CLERK OF THE SUPERIOR COURT  
Anita Dhir

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 vs.  
14 PREFERRED NATION, INC.,  
15 Defendant.

16 Case No.: *RG18900526*  
17 **COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

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

20 **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.

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

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
2 garment bags that have been sold and/or distributed by defendant Preferred Nation, Inc.  
3 (“Preferred Nation” 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.

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 or threaten to violate” the statute. Health & Safety  
19 Code § 25249.7.

20 6. Plaintiff alleges that Defendant manufactures, distributes, sells and/or offers for  
21 sale in California, without the requisite exposure warning, Preferred Nation garment bags (the  
22 “Products”), that expose persons to DEHP.

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

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).



1 in the State of California, and/or has otherwise purposefully availed itself of the California  
2 market. 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 December 22, 2017, Plaintiff gave notice of alleged violation of Health and  
6 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California  
7 citizens to DEHP contained in the Products without proper warning, subject to a private action to  
8 Defendant and to the California Attorney General’s office and the offices of the County District  
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
10 wherein the herein 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 Defendant under Proposition 65 to enforce the alleged violations which  
19 are the subject of Plaintiff’s notice of violation.

20 19. Plaintiff is commencing this action more than sixty (60) days from the date of his  
21 notice to Defendant, 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 Product.

28

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 11, 2017, continuing until the present, that Defendant has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DEHP without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of this 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 by dermal absorption through direct skin contact while handling the garment bag.  
12 Concentrations of gas phase DEHP can be expected to build within the small, enclosed interior  
13 of the bg. This gas phase DEHP can potentially be absorbed to the surface of the interior  
14 contents that are subsequently handled or worn in direct contact with skin. If the garment bag is  
15 stored or transported in a carrier, DEHP that leaches from the item may contaminate other  
16 articles contained within these closed spaces that are subsequently handled, worn, mouthed, or  
17 ingested by the user. Finally, while mouthing of the product does not seem likely, some amount  
18 of exposure through ingestion can occur by touching the product with subsequent touching of the  
19 user's hand to mouth.

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

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

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

