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ENDORSED
FILED
ALAMEDA COUNTY

APR 11 2018

CLERK OF THE SUPERIOR COURT

By CURTIAN GANTER
Deputy

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

12 ANTHONY FERREIRO,
13 Plaintiff,
14 vs.
15 TAYLOR MADE GROUP, LLC,
16 Defendant.

Case No.: RG18900378

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELEIF**

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

17
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 Tidy-Ups Line Holders that have been sold and/or distributed by defendant Taylor Made Group,
3 LLC (“Taylor Made” 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, Tidy-Ups, including Tidy-Ups Line
22 Holders, including but not limited to UPC No. 0 4001101101 5 (the “Products”), that expose
23 persons to 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 and/or distribution
26 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and
27 civil penalties described herein.

28

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

3 22. The Products contain 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 June 3, 2017, continuing until the present, that Defendant has continued
8 to knowingly and intentionally expose California users and consumers of the Product to DEHP
9 without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of this 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. Users may potentially be exposed to
13 DEHP by dermal absorption through direct skin contact with the strap during routine use when
14 the strap is manipulated with bare hands. The product can be expected to emit gas phase DEHP
15 into the air and accumulate DEHP at the surface over the lifetime of the product. Surface DEHP
16 can be absorbed to the surface of items that are hung on the vinyl strap. When handled, these
17 DEHP contaminated items can provide an indirect source of dermal transfer of DEHP to the
18 user's hand when the contents are grasped with bare hands. If the vinyl strap is stored or
19 transported in a carrier, DEHP that leaches from the item may contaminate other articles
20 contained within these closed spaces that are subsequently handled, worn, or ingested by the
21 user. Finally, while mouthing of the product does not seem likely, some amount of exposure
22 through ingestion can occur by touching the product with subsequent touching of the user's hand
23 to mouth.

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

27 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
28 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur

1 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
2 and offering of the Products to consumers in California

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

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

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

9 **PRAYER FOR RELIEF**

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

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

19
20 Dated: April 11, 2018

BRODSKY & SMITH, LLC

21 By:  _____

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