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ALAMEDA COUNTY

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

12 GABRIEL ESPINOSA,
13 Plaintiff,
14 vs.
15 SASHA HANDBAGS, INC.,
16 Defendant.

Case No.:

2018919824

**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 hazards caused by exposure di-n-butyl phthalate (DBP) and lead, toxic chemicals found in shoes
and sandals sold and/or distributed by defendant Sasha Handbags, Inc. ("Sasha Handbags" or
"Defendant") in California.

1 3. DBP and lead are harmful chemicals known to the State of California to cause
2 reproductive toxicity and/or cancer. On December 5, 2005, and on February 27, 1987, the State
3 of California listed DBP and lead, respectively, as chemicals known to the State to cause
4 reproductive toxicity and each chemical has come under the purview of Proposition 65
5 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
6 25249.8 & 25249.10(b). Additionally, on October 1, 1992, the State of California listed lead as a
7 chemical known to cause cancer.

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

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

18 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
19 California, without a requisite exposure warning, shoes and sandals (the “Products”) that expose
20 persons to DBP and lead.

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

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

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DBP and lead pursuant to Health and
2 Safety Code § 25249.7(a).

3 **PARTIES**

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

8 11. Defendant Sasha Handbags, through its business, effectively manufactures,
9 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or
10 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the
11 Products for sale or use in the State of California.

12 12. Plaintiff alleges that defendant Sasha Handbags is a “person” in the course of
13 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

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

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

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

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 16. On June 5, 2018, Plaintiff gave notice of alleged violation of Health and Safety
5 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
6 DBP and lead contained in the Products without proper warning, subject to a private action to
7 Defendant and to the California Attorney General's office and the offices of the County District
8 attorneys and City Attorneys for each city with a population greater than 750,000 persons
9 wherein the herein violations allegedly occurred.

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

27 22. The Products contain DBP and lead, hazardous chemicals found on the
28 Proposition 65 list of chemicals known to be hazardous to human health.

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

2 24. Plaintiff, based on his best information and belief, avers that at all relevant times
3 herein, and at least since January 16, 2018, continuing until the present, that Defendant has
4 continued to knowingly and intentionally expose California users and consumers of the Product
5 to DBP and lead without providing required warnings under Proposition 65.

6 25. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the Product. Consequently, the primary route of
8 exposure to these chemicals is through dermal exposure. Dermal exposure through the hands is
9 possible when the user manipulates and grasps the sandals with bare hands. If the Products are
10 worn with bare feet, the strap will be in constant contact with the top of the user's foot and
11 dermal exposure will occur. Should the Products be worn in water or handled with wet hands,
12 aqueous phthalate skin permeation rates have been reported to be faster than neat phthalate
13 permeation. If the Products are worn over clothing, these articles of clothing are likely to absorb
14 DBP/lead during use. The contaminated articles of clothing will continue to be a source of
15 dermal transfer after the sandals are removed. If the Products are stored or transported in a
16 carrier, DBP/lead that leaches from the sandals may contaminate other articles contained within
17 these closed spaces that are subsequently handled, worn, or ingested by the user. DBP/lead can
18 also be transferred to soil or dirt on the exterior of the Products, this DBP/lead containing sole
19 can potentially be resuspended in the air and ingested. Finally, while mouthing of the Products
20 does not seem likely, some amount of exposure through ingestion can occur by handling the
21 Products with subsequent touching of the user's hand to mouth.

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

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

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

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

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

7 **PRAYER FOR RELIEF**

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

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

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18 Dated: September 7, 2018

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