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ENDORSED  
FILED  
ALAMEDA COUNTY  
SEP 20 2019  
CLERK OF THE SUPERIOR COURT  
By Roni Gill Deputy

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

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 SIMPLY YOU WHOLESALE,  
15 PSKTRADING, INC., 2020 APPAREL,  
16 INC.,

17 Defendants.

Case No.:

**HG 19036057**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

18 Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following  
19 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  
hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
Simply You totes/bags sold and/or distributed by defendants Simply You Wholesale, PSK

1 Trading, Inc. d/b/a Simply You, and 2020 Apparel, Inc. dba Love Story (collectively,  
2 “Defendants”) in California.

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

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

19 6. Plaintiff alleges that Defendants distribute, sell and/or offer for sale in California,  
20 without a requisite exposure warning, Simply You totes/bags (the “Products”) that expose  
21 persons to DEHP.

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

26 8. Plaintiff seeks civil penalties against Defendants for their violations of  
27 Proposition 65 in accordance with Health and Safety Code § 25249.7(b). Plaintiff also seeks  
28 injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or

1 users of the Products with required warnings related to the dangers and health hazards associated  
2 with exposure to DEHP pursuant to Health and Safety Code § 25249.7(a).

3 **PARTIES**

4 9. 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. She brings  
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 10. Defendant Simply You Wholesale, through its business, effectively imports,  
9 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
10 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale  
11 or use in the State of California. Plaintiff alleges that defendant Simply You Wholesale is a  
12 “person” in the course of doing business within the meaning of Health & Safety Code sections  
13 25249.6 and 25249.11.

14 11. Defendant PSK Trading, Inc. d/b/a Simply You, through its business, effectively  
15 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or  
16 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
17 Products for sale or use in the State of California. Plaintiff alleges that defendant PSK Trading,  
18 Inc. is a “person” in the course of doing business within the meaning of Health & Safety Code  
19 sections 25249.6 and 25249.11.

20 12. Defendant 2020 Apparel, Inc. dba Love Story, through its business, effectively  
21 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or  
22 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
23 Products for sale or use in the State of California. Plaintiff alleges that defendant 2020 Apparel,  
24 Inc. is a “person” in the course of doing business within the meaning of Health & Safety Code  
25 sections 25249.6 and 25249.11.

26 **VENUE AND JURISDICTION**

27 13. Venue is proper in the County of Alameda because one or more of the instances  
28 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants

1 conducted, and continue to conduct, business in the County of Alameda with respect to the  
2 Products.

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

8 15. This Court has jurisdiction over Defendants because each Defendant is either a  
9 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
10 registered with the California Secretary of State as foreign corporations authorized to do business  
11 in the State of California, and/or has otherwise purposefully availed itself of the California  
12 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
13 consistent and permissible with traditional notions of fair play and substantial justice.

14 **SATISFACTION OF NOTICE REQUIREMENTS**

15 16. On September 27, 2018, Plaintiff gave notice of alleged violation of Health and  
16 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California  
17 citizens to DEHP from use of the Products without proper warning, subject to a private action to  
18 Defendants and to the California Attorney General's office and the offices of the County District  
19 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
20 wherein the herein violations allegedly occurred.

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

26 18. After receiving the Notice, and to Plaintiff's best information and belief, none of  
27 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
28

1 a cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
2 are the subject of the Notice.

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

5 **FIRST CAUSE OF ACTION**

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

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

9 21. Defendants have, at all times mentioned herein, acted as either a distributor and/or  
10 retailer of the Product.

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

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

14 24. Plaintiff, based on her best information and belief, avers that at all relevant times  
15 herein, and at least since September 27, 2018, continuing until the present, that Defendants have  
16 continued to knowingly and intentionally expose California users and consumers of the Product  
17 to DEHP without providing required warnings under Proposition 65.

18 25. The exposures that are the subject of the Notice result from the purchase,  
19 acquisition, handling and recommended use of the Product. Consequently, the primary route of  
20 exposure to these chemicals is through dermal absorption. Users may be exposed to DEHP by  
21 dermal absorption through direct skin contact with the Product during routine use when the  
22 Product is manipulated with bare hands. If the Product is handled with wet hands or the plastic is  
23 wet, aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP  
24 permeation. DEHP can be absorbed to the surface of contents in the Product that are  
25 subsequently handled, worn, mouthed, or ingested by the user. If the Product is stored or  
26 transported in a carrier, DEHP that leaches from the item may contaminate other articles  
27 contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested  
28 by the user. Finally, while mouthing of the Product does not seem likely, some amount of

1 exposure through ingestion can occur by touching the Product with subsequent touching of the  
2 user's hand to mouth.

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

6 27. Defendants have knowledge that the normal and reasonably foreseeable use of the  
7 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur  
8 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
9 sale and offering of the Products to consumers in California.

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

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

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

17 **PRAYER FOR RELIEF**


18 WHEREFORE, Plaintiff demands judgment against Defendants and requests the  
19 following relief:

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

27 Dated: September 20, 2019

BRODSKY & SMITH, LLC

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