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9 **ENDORSED
FILED
ALAMEDA COUNTY**

10 **OCT 28 2019**

11 **CLERK OF THE SUPERIOR COURT**
12 *[Signature]*
13 **By JAMIE THOMAS, Deputy**

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

16 ANTHONY FERREIRO,
17 Plaintiff,
18 vs.
19 R & S WORLDWIDE, INC., ROSS
20 STORES, INC.
21 Defendants.

22 Case No.:

23 **RG19040873**

24 **COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

29 **BACKGROUND OF THE CASE**

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

36 2. This complaint is a representative action brought by Plaintiff in the public interest
37 of the citizens of the State of California to enforce the People's right to be informed of the health
38 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
Orchid Love branded backpacks/bags sold and/or distributed by defendant R & S Worldwide,

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1 Inc. (“R & S Worldwide”) and Ross Stores, Inc. (“Ross Stores”) (collectively, “Defendants”) in
2 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.

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 manufacture, distribute and/or offer for sale in
20 California, without a requisite exposure warning, Orchid Love branded backpacks/bags (the
21 “Products”) that expose 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).

28

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

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

11 **SATISFACTION OF NOTICE REQUIREMENTS**

12 16. On March 14, 2019, Plaintiff gave notice of alleged violation of Health and Safety
13 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
14 DEHP contained in the Products without proper warning, subject to a private action to
15 Defendants and to the California Attorney General’s office and the offices of the County District
16 attorneys and City Attorneys for each city with a population greater than 750,000 persons
17 wherein the herein violations allegedly occurred.

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

23 18. After receiving the Notice, and to Plaintiff’s best information and belief, none of
24 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
25 a cause of action against Defendants under Proposition 65 to enforce the alleged violations which
26 are the subject of the Notice.

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

1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

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

5 21. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
6 and/or retailer of the Products.

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

9 23. The Products do not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since March 14, 2019, continuing until the present, that Defendants have
12 continued to knowingly and intentionally expose California users and consumers of the Products
13 to DEHP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the Products. Consequently, the primary route of
16 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur
17 through direct skin contact with the Products during routine use when the Products are grasped,
18 opened, or manipulated with bare hands. If the Products become wet due to contact with water
19 and is handled or held in contact with wet skin, aqueous DEHP skin permeation rates have been
20 reported to be faster than neat DEHP permeation. The user's clothes can absorb DEHP when the
21 Products are worn and subsequently these contaminated clothes will be a source of DEHP dermal
22 exposure. Concentrations of DEHP can be expected to build within the Products. This gas phase
23 and surface DEHP can potentially be absorbed to the surface of the Products that can be
24 subsequently handled, held in direct contact with skin, mouthed, or ingested by the user. If the
25 Products are stored or transported in a carrier, DEHP that leaches from the Products may
26 contaminate other articles contained within the storage area or carrier that are subsequently
27 handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the Products does
28

1 not seem likely, some amount of exposure through ingestion can occur by handling the Products
2 with subsequent touching of the user's hand to mouth.

3 26. Plaintiff, based on his 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 Products.

6 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
7 Products expose 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: October 28, 2019

BRODSKY & SMITH, LLC

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