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ENDORSED
FILED
ALAMEDA COUNTY

JAN 07 2020

CLERK OF THE SUPERIOR COURT
By _____

Roni Gil Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

10 PRECILA BALABBO,

11 Plaintiff,

12 vs.

13 B.R.E. INDUSTRIES, INC.,

14 Defendant.

Case No.:

HG20049352

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

15 Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following
16 cause of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and/or diisononyl phthalate
27 (DINP), toxic chemicals found in fanny packs/waist bags and cosmetic bags/kits/cases/pouches
28

- 1 -
COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF
HEALTH & SAFETY CODE §25249.5

Filed By FAX

1 sold and/or distributed by defendant B.R.E. Industries, Inc. (“BRE” or “Defendant”) in
2 California.

3 3. DEHP and DINP are harmful chemicals known to the State of California to cause
4 cancer and/or reproductive toxicity. On January 1, 1988 (DEHP), and December 20, 2013
5 (DINP), the State of California listed DEHP and DINP as chemicals known to the State to cause
6 cancer and each chemical has come under the purview of Proposition 65 regulations since the
7 time of its listing. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
8 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to
9 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 and/or offers for sale in
21 California, without a requisite exposure warning, fanny packs/waist bags and cosmetic
22 bags/kits/cases/pouches (the “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 injunction 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).

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendant to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code § 25249.7(a).

PARTIES

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

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

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

VENUE AND JURISDICTION

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

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

15. This Court has jurisdiction over Defendant because Defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business

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 September 18, 2019, 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/DINP contained in the Products without proper warning, subject to a private
8 action to Defendant and to the California Attorney General's office and the offices of the County
9 District attorneys and City Attorneys for each city with a population greater than 750,000
10 persons 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/DINP exposure, and that counsel believed there was meritorious and reasonable cause for
15 a 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 the Notice.

20 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
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.

1 22. The Products contain DEHP and DINP, hazardous chemicals found on the
2 Proposition 65 list of chemicals known to be hazardous to human health.

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

4 24. Plaintiff, based on her best information and belief, avers that at all relevant times
5 herein, and at least since June 7, 2019, continuing until the present, that Defendant has continued
6 to knowingly and intentionally expose California users and consumers of the Product to
7 DEHP/DINP without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of the Notice result from the purchase,
9 acquisition, handling and recommended use of the Product. Consequently, the primary route of
10 exposure to these chemicals in the fanny pack Notice is through dermal absorption. Users can be
11 exposed to DEHP/DINP by dermal absorption through direct skin contact with the pink plastic
12 during routine use when the bag is handled. Concentrations of DEHP/DINP can be expected to
13 build within the small, enclosed interior of the bag. This gas phase and surface DEHP/DINP can
14 absorb to the surface of the interior contents, including but not limited to cosmetics, that can be
15 subsequently handled, worn, mouthed, or ingested by the user. If the bag is stored or transported
16 in a carrier, DEHP that leaches from the item may contaminate other articles contained within
17 these closed spaces are subsequently handled, worn, mouthed, or consumed. Finally, while direct
18 mouthing of the fanny pack does not seem likely, some amount of exposure through ingestion
19 can occur by touching the fanny pack with subsequent touching of the user's hand to mouth.

20 27. Similarly, the primary route of exposure to these chemicals in the cosmetic
21 bag/case/kit/pouch Notice is through dermal absorption. during routine use when the bag is
22 handled with bare hands. Users may be exposed to DINP/DEHP by dermal absorption through
23 direct skin contact with the clear plastic during routine use when the bag is handled with bare
24 hands. DEHP/DINP that leaches from the plastic may contaminate items contained within the
25 fanny pack that are subsequently handled, worn in direct contact with skin, mouthed, or ingested
26 by the user. If the fanny pack is stored or transported in a carrier, DEHP/DINP that leaches from
27 the fanny pack may contaminate other articles contained within the storage area or carrier that
28 are subsequently handled, worn, mouthed, or ingested by the user. DEHP/DINP from the clear

1 plastic can contaminate clothing it is worn in contact with, and this DINP contaminated clothing
2 can be subsequently result in dermal exposure to DEHP/DINP. Finally, while mouthing of the
3 cosmetic bag/case/kit/pouch does not seem likely, some amount of exposure through ingestion
4 can occur by touching the cosmetic bag/case/kit/pouch with subsequent touching of the user's
5 hand to mouth.

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

9 29. Defendant has knowledge that the normal and reasonably foreseeable use of the
10 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
11 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
12 and offering of the Products to consumers in California.

13 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
14 Complaint.

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

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

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
21 following relief:

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

1 Dated: January 6, 2020

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