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ALAMEDA COUNTY

JAN 29 2021

CLERK OF THE SUPERIOR COURT

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 MACY'S, INC.,

15 Defendant.

Case No.: **RG21087882**

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People's right to be informed of the health
27 hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in NU Women
28 chain strap purses/bags sold and/or distributed by defendant Macy's, Inc. ("Macy's" or the
"Defendant") in California.

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

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1 3. DINP is a harmful chemical known to the State of California to cause cancer. On
2 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause
3 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
4 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

10 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
11 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
12 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
13 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
14 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
15 25249.7.

16 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
17 without a requisite exposure warning, NU Women chain strap purses/bags (the “Products”) that
18 expose persons to DINP.

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

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

25 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
26 Defendant to provide purchasers or users of the Products with required warnings related to the
27 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code
28 § 25249.7(a).

1 17. The people of the State of California declared in Proposition 65 their right “[t]o be
2 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
3 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

4 18. To effect this goal, Proposition 65 requires that individuals be provided with a
5 “clear and reasonable warning” before being exposed to substances listed by the State of California
6 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

7 No person in the course of doing business shall knowingly and intentionally expose any
8 individual to a chemical known to the state to cause cancer or reproductive toxicity without
9 first giving clear and reasonable warning to such individual...

10 19. An exposure to a chemical in a consumer product is one “which results from a
11 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
12 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
13 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
14 shall provide a warning to any person to whom the product is sold or transferred unless the product
15 is packaged or labeled with a clear and reasonable warning.”

16 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
17 more of the following methods individually or in combination:¹

18 a. A warning that appears on a product’s label or other labeling.

19 b. Identification of the product at the retail outlet in a manner which provides
20 a warning. Identification may be through shelf labeling, signs, menus, or a combination
21 thereof.

22 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
23 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
24 with such conspicuousness, as compared with other words, statements, designs, or devices
25

26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 in the label, labeling or display as to render it likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use.

3 d. A system of signs, public advertising identifying the system and toll-free
4 information services, or any other system that provides clear and reasonable warnings.

5 21. Proposition 65 provides that any “person who violates or threatens to violate” the
6 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
7 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
8 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
9 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
10 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

11 **FACTUAL BACKGROUND**

12 22. On December 20, 2013, the State of California listed DINP as a chemical known to
13 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
14 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
15 In summary, the Listed Chemical was listed under Proposition 65 as a chemical known to the State
16 to cause cancer.

17 23. The consumer exposures that are the subject of this Complaint result from through
18 dermal absorption. Users can be exposed to DINP by dermal absorption through direct skin contact
19 with the Products during routine use when the Products are handled or when items are inserted or
20 removed from the Products. Concentrations of DINP can be expected to build within the enclosed
21 interior of the Products that can absorb to the surface of contents placed in the interior of the
22 Products which can be subsequently handled, worn, mouthed, or ingested by the user. If the
23 Products are stored or transported in a carrier, DINP that leaches from the Products may
24 contaminate other articles contained within these closed spaces are subsequently handled, worn,
25 mouthed, or consumed. Finally, while direct mouthing of the Products does not seem likely, some
26 amount of exposure through ingestion can occur by touching the Products with subsequent
27 touching of the user’s hand to mouth.

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

4 38. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Products exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
6 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
7 the Products to consumers in California

8 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
9 Complaint.

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

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
16 relief:

17 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
18 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
19 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

20 B. That the court preliminarily and permanently enjoin Defendant mandating
21 Proposition 65 compliant warnings on the Products;

22 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
23 amount of \$50,000.00.

24 D. That the court grant any further relief as may be just and proper.

25 Dated: January 29, 2021

BRODSKY & SMITH, LLC

26 By: _____

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