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9 ENDORSED  
10 FILED  
11 ALAMEDA COUNTY  
12 JAN 26 2021

13 CLERK OF SUPERIOR COURT  
14 By JAMIE THOMAS, Deputy

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

17 ANTHONY FERREIRO,  
18 Plaintiff,

19 vs.

20 PBIGROUP, LLC, PBIGROUP, INC.,  
21 SUPRE, INC.,  
22 Defendants.

23 Case No.:

24 **RG21088866**

25 **COMPLAINT FOR CIVIL PENALTIES AND  
26 INJUNCTIVE RELIEF**

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

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

3 **BACKGROUND OF THE CASE**

4 1. Plaintiff brings this representative action on behalf of all California citizens to  
5 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
6 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,  
7 "[n]o 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 first  
9 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

10 2. This complaint is a representative action brought by Plaintiff in the public interest  
11 of the citizens of the State of California to enforce the People's right to be informed of the health  
12 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
13 Hempz his kit – cases/bags sold and/or distributed by defendant PBIGroup, LLC ("PBI LLC"),

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

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

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
21 without a requisite exposure warning, Hempz his kit – cases/bags (the “Products”) that expose  
22 persons to DEHP.

23 7. Defendants’ 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 Defendants to the enjoinder and civil  
26 penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).



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

3 16. 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 enforcement  
6 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
7 jurisdiction over this lawsuit.

8 17. 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 market.  
12 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
13 and permissible with traditional notions of fair play and substantial justice.

14 **STATUTORY BACKGROUND**

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

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

21 No 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  
23 first giving clear and reasonable warning to such individual...

24 20. An exposure to a chemical in a consumer product is one “which results from a  
25 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
26 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
27 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
28

1 shall provide a warning to any person to whom the product is sold or transferred unless the product  
2 is packaged or labeled with a clear and reasonable warning.”

3 21. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
4 more of the following methods individually or in combination:<sup>1</sup>

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

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

9 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
10 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet  
11 with such conspicuousness, as compared with other words, statements, designs, or devices  
12 in the label, labeling or display as to render it likely to be read and understood by an  
13 ordinary individual under customary conditions of purchase or use.

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

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

22 **FACTUAL BACKGROUND**

23 23. On January 1, 1988, the State of California listed DEHP as a chemical known to  
24 the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
25

26 \_\_\_\_\_  
27 <sup>1</sup> 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 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
2 On October 24, 2003, the State of California listed DEHP as a chemical known to cause  
3 reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a  
4 chemical known to the State to cause cancer and reproductive toxicity.

5 24. The consumer exposures that are the subject of this Complaint result from dermal  
6 absorption. Dermal absorption of DEHP can occur through direct skin contact when the Products  
7 are contacted with bare hands. Concentrations of DEHP can be expected to build within the  
8 zippered interior of the Products. Articles placed in the Products, including, but not limited to the  
9 manufacturer shave gel and body lotion, can absorb DEHP that can subsequently be handled,  
10 mouthed, or ingested by the user. If the Products are stored or transported in a carrier, DEHP that  
11 leaches from the Products may contaminate other articles contained within these closed spaces that  
12 are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the  
13 Products does not seem likely, some amount of exposure through ingestion can occur by touching  
14 the Products with subsequent touching of the user's hand to mouth.

15 25. Defendants have manufactured, processed, marketed, distributed, offered to sell  
16 and/or sold the Products in California since at least February 25, 2020. The Products continue to  
17 be distributed and sold in California without the requisite warning information.

18 26. At all times relevant to this action, Defendants have knowingly and intentionally  
19 exposed users and/or consumers of the Products to DEHP without first giving a clear and  
20 reasonable exposure warning to such individuals.

21 27. As a proximate result of acts by each defendant, as a person in the course of doing  
22 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
23 California, including in Alameda County, have been exposed to DEHP without a clear and  
24 reasonable warning on the Products. The individuals subject to the violative exposures include  
25 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
26 the Products.

27 **SATISFACTION OF NOTICE REQUIREMENTS**



1 continued to knowingly and intentionally expose California users and consumers of the Product to  
2 DEHP without providing required warnings under Proposition 65.

3 37. The exposures that are the subject of the Notice result from the purchase,  
4 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
5 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur  
6 through direct skin contact when the Products are contacted with bare hands. Concentrations of  
7 DEHP can be expected to build within the zippered interior of the Products. Articles placed in the  
8 Products, including, but not limited to the manufacturer shave gel and body lotion, can absorb  
9 DEHP that can subsequently be handled, mouthed, or ingested by the user. If the Products are  
10 stored or transported in a carrier, DEHP that leaches from the Products may contaminate other  
11 articles contained within these closed spaces that are subsequently handled, worn, mouthed, or  
12 ingested by the user. Finally, while mouthing of the Products does not seem likely, some amount  
13 of exposure through ingestion can occur by touching the Products with subsequent touching of the  
14 user's hand to mouth.

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

18 39. Defendants have knowledge that the normal and reasonably foreseeable use of the  
19 Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur  
20 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of  
21 the Products to consumers in California

22 40. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
23 Complaint.

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

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

28



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
3 relief:

- 4 A. That the court assess civil penalties against each defendant in the amount of \$2,500  
5 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- 7 B. That the court preliminarily and permanently enjoin Defendants mandating  
8 Proposition 65 compliant warnings on the Products;
- 9 C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the  
10 amount of \$50,000.00.
- 11 D. That the court grant any further relief as may be just and proper.

12 Dated: January 26, 2021

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