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**ENDORSED
FILED
ALAMEDA COUNTY**

SEP 20 2021

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 **RG 21113146**

12 CLERK OF THE SUPERIOR COURT
13 By JAME THOMAS, Deputy

14 ANTHONY FERREIRO,
15 Plaintiff,

16 vs.

17 FUN SOURCE, LLC, OUTDOOR
18 WORLD, INC.,
19 Defendants.

20 Case No.:

21 **COMPLAINT FOR CIVIL PENALTIES AND
22 INJUNCTIVE RELIEF**

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

25 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the following
26 cause of action in the public interest of the citizens of the State of California.

27 **BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest
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
Duravision Pro reflective straps sold and/or distributed by defendant Fun Source, LLC (“Fun

1 Source”) and defendant Outdoor World, Inc. (“Outdoor World”) (collectively, the “Defendants”)
2 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, Duravision Pro reflective straps (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 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
2 Defendants to provide purchasers or users of the Products with required warnings related to the
3 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code
4 § 25249.7(a).

5 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

6 **PARTIES**

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

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

16 13. Defendant Outdoor World, through its business, effectively imports, distributes,
17 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
18 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
19 Plaintiff alleges that defendant Outdoor World is a “person” in the course of doing business within
20 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

21 **VENUE AND JURISDICTION**

22 14. Venue is proper in the County of Alameda because one or more of the instances of
23 wrongful conduct occurred, and continue to occur in this county and/or because Defendants
24 conducted, and continue to conduct, business in the County of Alameda with respect to the
25 Products.

26 15. This Court has jurisdiction over this action pursuant to California Constitution
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

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

9 **STATUTORY BACKGROUND**

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

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

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

19 19. An exposure to a chemical in a consumer product is one “which results from a
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
23 shall provide a warning to any person to whom the product is sold or transferred unless the product
24 is packaged or labeled with a clear and reasonable warning.”

1 reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a
2 chemical known to the State to cause cancer and reproductive toxicity.

3 23. The consumer exposures that are the subject of this Complaint result from dermal
4 absorption. Users can be exposed to DEHP by dermal absorption through direct skin contact with
5 the Products during routine use when the Products are handled with bare hands or if the Products
6 are worn in contact with bare skin. If the Products are stored or transported in a carrier, DEHP that
7 leaches from the Products may contaminate other articles contained within these closed spaces that
8 are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the
9 Products does not seem likely, some amount of exposure through ingestion can occur by touching
10 the Products with subsequent touching of the user's hand to mouth.

11 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
12 and/or sold the Products in California since at least September 21, 2020. The Products continue to
13 be distributed and sold in California without the requisite warning information.

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

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

23 **SATISFACTION OF NOTICE REQUIREMENTS**

24 27. On September 21, 2020, Plaintiff gave notice of alleged violation of Health and
25 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens
26 to DEHP contained in the Products without proper warning, subject to a private action to
27 Defendants and to the California Attorney General's office and the offices of the County District
28

1 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
2 the herein violations allegedly occurred.

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

8 29. After receiving the Notice, and to Plaintiff's best information and belief, none of
9 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
10 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
11 are the subject of the Notice.

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

14 **FIRST CAUSE OF ACTION**

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

16 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of
17 this Complaint as though fully set forth herein.

18 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
19 of the Products.

20 33. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list
21 of chemicals known to be hazardous to human health.

22 34. The Products do not comply with the Proposition 65 warning requirements.

23 35. Plaintiff, based on his best information and belief, avers that at all relevant times
24 herein, and at least since September 21, 2020, continuing until the present, that Defendants have
25 continued to knowingly and intentionally expose California users and consumers of the Products
26 to DEHP without providing required warnings under Proposition 65.

27 36. The exposures that are the subject of the Notice result from the purchase,
28 acquisition, handling and recommended use of the Products. Consequently, the primary route of

1 exposure to these chemicals is through dermal absorption. Users can be exposed to DEHP by
2 dermal absorption through direct skin contact with the Products during routine use when the
3 Products are handled with bare hands or if the Products are worn in contact with bare skin. If the
4 Products are stored or transported in a carrier, DEHP that leaches from the Products may
5 contaminate other articles contained within these closed spaces that are subsequently handled,
6 worn, mouthed, or ingested by the user. Finally, while mouthing of the Products does not seem
7 likely, some amount of exposure through ingestion can occur by touching the Products with
8 subsequent touching of the user's hand to mouth.

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

12 38. Defendants have knowledge that the normal and reasonably foreseeable use of the
13 Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
14 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
15 the Products to consumers in California

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

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

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

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: September 17, 2021

BRODSKY SMITH

13 By:  _____

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