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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**01/05/2021** at 10:59:24 AM  
Clerk of the Superior Court  
By Carolina Miranda, Deputy Clerk

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO**

13 BRAD VAN PATTEN, an individual

14 Plaintiff,

15 v.

16 URBAN OUTFITTERS, Inc., a Delaware  
17 Corporation; and DOES 1 through 10,  
18 inclusive

19 Defendants.

Case No. 37-2021-00000421-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

20 Plaintiff Brad Van Patten (“Plaintiff”) brings this action in the interests of the general public  
21 and, on information and belief, hereby alleges:

22 **INTRODUCTION**

23 1. This action seeks to remedy the failure of defendant Urban Outfitters, Inc. to warn  
24 individuals in California they are being exposed to the chemical Diethylhexylphthalate (“DEHP”) by  
25 their product, the **Shaye Clear Festival Bag** (“Product”).

26 2. California’s Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to  
27 know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally  
28 expose individuals in California to chemicals known to the State to cause cancer, birth defects, or  
other reproductive harm without providing clear and reasonable warnings to individuals prior to

1 exposure.

2 3. Through dermal contact with the Products, Californians are exposed to DEHP at  
3 levels requiring a “clear and reasonable warning” under Proposition 65. Yet Defendant failed to  
4 provide any warning to consumers that they are being exposed to the carcinogenic chemical  
5 DEHP. This includes a warning on their website or a proper warning on the product packaging.

6 4. Defendant’s past and, on information and belief, continued manufacturing,  
7 distribution, and sale of the Product in California, without a clear and reasonable warning, causes  
8 individuals to be involuntarily and unwittingly exposed to DEHP at levels that violate Proposition  
9 65.

10 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued  
11 manufacturing, distribution, and/or sales of the Products in California without provision of clear  
12 and reasonable warnings regarding the risks of cancer posed by exposure to DEHP through dermal  
13 contact with the Products. Plaintiff seeks an injunctive order compelling Defendant to bring their  
14 business practices into compliance with Proposition 65 by providing a clear and reasonable  
15 warning to each individual who has been and who in the future may be exposed to DEHP from  
16 dermal contact with the Products. Plaintiff also seeks an order compelling Defendant to identify  
17 and locate each individual person who in the past has purchased the Product, and to provide to  
18 each such purchaser a clear and reasonable warning that use of the Product will cause exposures to  
19 DEHP.

20 **JURISDICTION AND VENUE**

21 6. This Court has jurisdiction over this action pursuant to Health and Safety Code §  
22 25249.8, allowing enforcement of Proposition 65 in any court of competent jurisdiction, and  
23 pursuant to California Constitution Article VII, Section 10, which grants the Superior Court  
24 “original jurisdiction in all causes except those given by statute to other courts.” The causes of  
25 actions alleged herein are not given by statute to other trial courts.

26 7. This Court has jurisdiction over Defendant because Defendant is a business having  
27 sufficient minimum contacts with California, or otherwise intentionally availing themselves of the  
28 California market through the distribution and sale of the Products in the State of California to

1 render the exercise of jurisdiction over this defendant by the California courts consistent with  
2 traditional notions of fair play and substantial justice.

3 8. Venue in this action is proper in the San Diego Superior Court because Defendant  
4 have violated or threaten to violate California law in the County of San Diego.

5 **PARTIES**

6 9. Plaintiff Brad Van Patten is a resident of San Diego County California and working  
7 to protect human health and the environment. Plaintiff is a person with the meaning of Health &  
8 Safety Code § 25118 and brings this enforcement action in the public interest pursuant to Health &  
9 Safety Code § 25249.7(d).

10 10. Defendant is a corporation organized under the State of Delaware and is a person  
11 doing business with the meaning of Health & Safety Code § 25249.11.

12 11. Defendant has manufactured, packaged, distributed, marketed and/or offered the  
13 Product for sale or use in California and the County of San Diego. Plaintiff is informed and  
14 believes, and thereupon alleges, that Defendant continues to manufacture, package, distribute,  
15 market and/or sell the Products in California and in San Diego County.

16 **STATUTORY BACKGROUND**

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

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

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

27 14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or  
28 exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No

1 knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs.  
2 (“CCR”) §§ 25102(n).

3 15. Proposition 65 provides that any “person who violates or threatens to violate” the  
4 statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7.  
5 The phrase “threaten to violate” is defined to mean creating “a condition in which there is a  
6 substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e).  
7 Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Health &  
8 Safety Code § 25249.7.

9 16. In 1988, the State of California officially listed the chemical DEHP as a chemical  
10 known to cause cancer. It was also added again in 2003 for additional toxicities. DEHP became  
11 subject to the warning requirement one year later and was therefore subject to the “clear and  
12 reasonable” warning requirements of Proposition 65 beginning on January 1, 1989. Health &  
13 Safety Code § 25249.6 *et seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.* Defendants failed to comply  
14 with Health & Safety Code 25601, *et seq.* because it did not provide a clear and reasonable  
15 warning as required. Defendant further failed to comply with 27 Cal. Code Regs. §§ 25602  
16 because it failed to provide a clear and reasonable warning for internet purchases as required.  
17 Defendants also failed to comply with 27 Cal. Code Regs. § 25603 because it did not provide a  
18 clear and reasonable warning on the subject product as required by § 25603(a)(1).

19 **FACTUAL BACKGROUND**

20 17. To test Defendant’s Products for DEHP, Plaintiff hired a well-  
21 respected and accredited testing laboratory and toxicologist. The results of testing undertaken by  
22 Plaintiff of the Products show that they were in excess of the safe harbor limits and therefore in  
23 violation for DEHP.

24 18. Based on testing results, on September 25, 2020, Plaintiff sent a 60-Day Notice of  
25 Proposition 65 Violations (“Notice”) to defendants regarding the Product.

26 19. On the same day they were sent to Defendant, each Notice was also sent to the  
27 requisite public enforcement agencies.

28 20. Each of the Notices described above were issued pursuant to, and in compliance

1 with, the requirements of Health & Safety Code § 25249.7(d) and the statute’s implementing  
2 regulations regarding the notice of the violations to be given to certain public enforcement  
3 agencies and to the violators. Each of the Notices included, *inter alia*, the following information:  
4 the name, address, and telephone number of the noticing individuals; the name of the alleged  
5 violator; the statute violated; the approximate time period during which violations occurred; and  
6 descriptions of the violations, including the chemical involved, the routes of toxic exposure, and  
7 the specific product or type of product causing the violations, and was issued as follows:

- 8 a. The relevant Defendant was provided a copy of the Notice by U.S. Mail.
- 9 b. The relevant Defendant was provided a copy of the document entitled “The  
10 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
11 Summary,” which is also known as Appendix A to Title 27 of Cal. Code Regs §  
12 25903.
- 13 c. The California Attorney General was provided a copy of the Notice via online  
14 submission.
- 15 d. The California Attorney General was provided with a Certificate of Merit by  
16 the attorney for the noticing party, stating that there is a reasonable and  
17 meritorious case for this action, and attaching factual information sufficient to  
18 establish a basis for the certificate, including the identity of the persons  
19 consulted with and relied on by the certified, and the facts, studies, or other data  
20 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 21 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within  
22 which the Nut Butter Products are offered for sale within California were  
23 provided with a copy of the Notice pursuant to Health & Safety Code §  
24 25249.7(d)(1).

25 21. At least 60-days have elapsed since Plaintiff sent Notice to Defendant.

26 The appropriate public enforcement agencies have failed to commence and diligently prosecute a  
27 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendants based on the  
28 allegations herein.

1           22.     On information and belief, the Products have been manufactured,  
2 distributed, and/or sold by Defendants in California. On information and belief, the Product  
3 continues to be distributed and sold in California without the requisite warning information.

4           23.     At all times relevant to this action, Defendant has knowingly and intentionally  
5 exposed the users of the Products to DEHP without first giving a clear and reasonable warning to  
6 such individuals.

7           24.     As a proximate result of acts of Defendant as persons in the course of doing  
8 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the  
9 State of California, including the County of San Diego, have been exposed to DEHP without a  
10 clear and reasonable warning. The individuals subject to the illegal exposures include normal and  
11 foreseeable users of the Products, as well as all other persons exposed to the Products.

12  
13                                   **FIRST CAUSE OF ACTION**  
14                                   **(Violations of Health and Safety Code § 25249.5, *et seq.*)**

15           25.     Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,  
16 inclusive, as if specifically set forth herein.

17           26.     Defendant is a person doing business within the meaning of Health & Safety Code  
18 § 25249.11.

19           27.     DEHP is listed on the State of California as a chemical known to cause cancer.

20           28.     Defendant has and continues to knowingly and intentionally expose individuals  
21 who have dermal contact with the Products to the chemical DEHP without first providing a clear  
22 and reasonable warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and  
23 25249.11(f).

24           29.     Continuing commission by Defendant of the acts alleged above will irreparably  
25 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
26 adequate remedy at law.

27                                   **PRAYER FOR RELIEF**

28           Wherefore, Plaintiff prays for the following relief:

1           1. A preliminary and permanent injunction, pursuant to Health & Safety Code §  
2 25249.7(b), enjoining Defendant, their agents, employees, assigns and all persons acting in  
3 concert or participating with Defendant, from distributing or selling the Products in California  
4 without first providing a clear and reasonable warning that consumers of the Products are exposed  
5 to DEHP;

6           2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling  
7 Defendant to identify and locate each individual who has purchased the Product and to provide a  
8 warning to such persons that they have been exposed to a chemical known to cause cancer.

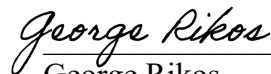
9           3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b)  
10 against Defendant in the amount of \$2,500 per day for violation of Proposition 65;

11           4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to  
12 California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the  
13 Court; and,

14           5. Such other and further relief as may be just and proper.

15  
16 DATED: January 5, 2021

**LAW OFFICES OF GEORGE RIKOS**

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22 Brad Van Patten  
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