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FILED
ALAMEDA COUNTY

JAN 13 2021

CLERK OF THE SUPERIOR COURT
 By *[Signature]*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
 11 Plaintiff,

12 vs.

13 EBSCO INDUSTRIES, INC., PLASTIC
 14 RESEARCH DEVELOPMENT
 CORPORATION DBA PRADCO
 15 OUTDOOR BRANDS,
 Defendants.

Case No.: **RG2108576P**

**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.

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.

26 2. This complaint is a representative action brought by Plaintiff in the public interest
 27 of the citizens of the State of California to enforce the People's right to be informed of the health
 28 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

1 Summit storage bags/packs and Lindy leech and bait tamers sold and/or distributed by defendant
2 Ebsco Industries, Inc. ("Ebsco") and defendant Plastic Research Development Corporation dba
3 PRADCO Outdoor Brands ("PRADCO") (collectively, the "Defendants") in California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer and
5 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known
6 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since
7 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
8 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
9 reproductive toxicity.

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

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
16 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
17 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
18 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
19 actions of a defendant which "violate or threaten to violate" the statute. Health & Safety Code §
20 25249.7.

21 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
22 without a requisite exposure warning, Summit storage bags/packs and Lindy leech and bait tamers
23 (the "Products") that expose persons to DEHP.

24 7. Defendants' failure to warn consumers and other individuals in California of the
25 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
26 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
27 penalties described herein.

1 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
4 Defendants to provide purchasers or users of the Products with required warnings related to the
5 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code
6 § 25249.7(a).

7 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

8 **PARTIES**

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

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

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

23 **VENUE AND JURISDICTION**

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

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

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

12 **STATUTORY BACKGROUND**

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

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

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

22 19. An exposure to a chemical in a consumer product is one “which results from a
23 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
24 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
25 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
26 shall provide a warning to any person to whom the product is sold or transferred unless the product
27 is packaged or labeled with a clear and reasonable warning.”

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

3 a. A warning that appears on a product's label or other labeling.

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

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

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

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

20 **FACTUAL BACKGROUND**

21 22. On January 1, 1988, the State of California listed DEHP as a chemical known to
22 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
23 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
24 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
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 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 through
4 dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin
5 contact with the tan material during routine use when the storage bags/packs interior contact bare
6 hands. Concentrations of DEHP can be expected to build within the small, enclosed interior of the
7 storage bags/packs. This DEHP can absorb to the surface of the interior contents that are
8 subsequently handled, held in direct contact with skin, mouthed, or ingested by the user. Finally,
9 while mouthing of the strap does not seem likely, some amount of exposure through ingestion can
10 occur by touching the storage bags/packs with subsequent touching of the user's hand to mouth.

11 24. Defendants have supplied, processed, marketed, distributed, offered to sell and/or
12 sold the Summit storage bags/packs in California since at least October 7, 2020. The Summit
13 storage bags/packs continue to be distributed and sold in California without the requisite warning
14 information.

15 25. The consumer exposures that are the subject of this Complaint result from through
16 dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin
17 contact with the mesh material when handled with bare hands. If the leech and bait tamers are
18 stored or transported in a carrier, DEHP that leeches from the leech and bait tamers may
19 contaminate other articles contained within these closed spaces that are subsequently handled,
20 worn, mouthed, or consumed. Finally, while mouthing of the leech and bait tamers does not seem
21 likely, some amount of exposure through ingestion can occur by touching the leech and bait tamers
22 with subsequent touching of the user's hand to mouth.

23 26. Defendants have supplied, processed, marketed, distributed, offered to sell and/or
24 sold the leech and bait tamers in California since at least October 12, 2020. The leech and bait
25 tamers continue to be distributed and sold in California without the requisite warning information.

26 27. At all times relevant to this action, Defendants have knowingly and intentionally
27 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
28 giving a clear and reasonable exposure warning to such individuals.

1 28. As a proximate result of acts by each defendant, as a person in the course of doing
2 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
3 California, including in Alameda County, have been exposed to the Listed Chemical without a
4 clear and reasonable warning on the Products. The individuals subject to the violative exposures
5 include normal and foreseeable users, consumers and patients that use the Products, as well as all
6 others exposed to the Products.

7 **SATISFACTION OF NOTICE REQUIREMENTS**

8 29. On October 7, 2020 (storage bags/packs) and October 12, 2020 (leech and bait
9 tamers), Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the
10 "Notices") to Defendants concerning the exposure of California citizens to DEHP contained in the
11 Products without proper warning, subject to a private action to Defendants and to the California
12 Attorney General's office and the offices of the County District attorneys and City Attorneys for
13 each city with a population greater than 750,000 persons wherein the herein violations allegedly
14 occurred.

15 30. The Notices complied with all procedural requirements of Proposition 65 including
16 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
17 least one person with relevant and appropriate expertise who reviewed relevant data regarding
18 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private
19 action.

20 31. After receiving the Notices, and to Plaintiff's best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
22 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
23 are the subject of the Notices.

24 32. Plaintiff is commencing this action more than sixty (60) days from the date of the
25 Notices to Defendant, as required by law.

26 **FIRST CAUSE OF ACTION**

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

1 33. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 32 of
2 this Complaint as though fully set forth herein.

3 34. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
4 and/or retailer of the Products.

5 35. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list
6 of chemicals known to be hazardous to human health.

7 36. The Products do not comply with the Proposition 65 warning requirements.

8 37. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since October 7, 2020 (storage bags/packs) and October 12, 2020 (leech and
10 bait tamers), continuing until the present, that Defendants have continued to knowingly and
11 intentionally expose California users and consumers of the Product to DEHP without providing
12 required warnings under Proposition 65.

13 38. The exposures that are the subject of the storage bags/packs Notice result from the
14 purchase, acquisition, handling and recommended use of the storage bags/packs. Users can be
15 exposed to DEHP by dermal absorption through direct skin contact with the tan material during
16 routine use when the storage bags/packs interior contact bare hands. Concentrations of DEHP can
17 be expected to build within the small, enclosed interior of the storage bags/packs. This DEHP can
18 absorb to the surface of the interior contents that are subsequently handled, held in direct contact
19 with skin, mouthed, or ingested by the user. Finally, while mouthing of the strap does not seem
20 likely, some amount of exposure through ingestion can occur by touching the storage bags/packs
21 with subsequent touching of the user's hand to mouth.

22 39. The exposures that are the subject of the leech and bait tamers Notice result from
23 the purchase, acquisition, handling and recommended use of the leech and bait tamers.
24 Consequently, the primary route of exposure to these chemicals is through dermal absorption.
25 Users can be exposed to DEHP by dermal absorption through direct skin contact with the mesh
26 material when handled with bare hands. If the leech and bait tamers are stored or transported in a
27 carrier, DEHP that leeches from the leech and bait tamers may contaminate other articles contained
28 within these closed spaces that are subsequently handled, worn, mouthed, or consumed. Finally,

1 while mouthing of the leech and bait tamers does not seem likely, some amount of exposure
2 through ingestion can occur by touching the leech and bait tamers with subsequent touching of the
3 user's hand to mouth.

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

7 41. Defendants have knowledge that the normal and reasonably foreseeable use of the
8 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
9 by their deliberate, non-accidental participation in the importation, distribution, sale and offering
10 of the Products to consumers in California

11 42. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
12 Complaint.

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

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

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
19 relief:

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

23 B. That the court preliminarily and permanently enjoin Defendants mandating
24 Proposition 65 compliant warnings on the Products;


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

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

28 Dated: January 12, 2021

BRODSKY & SMITH, LLC

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