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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/19/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-22-597718

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 WINNWELL, INC.,

15 BOB PERANI SPORT SHOPS, INC.,

16 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the following
18 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.

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 di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
28 WINNWELL wheeled backpack (UPC# 676824030983), sold and/or distributed by defendant

1 Winnwell, Inc.. (“Winnwell”) and/or defendant Bob Perani Sport Shops, Inc. (“Bob Perani”)
2 (collectively, “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 that will create an exposure above safe harbor levels with a “clear and
13 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
14 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, WINNWELL wheeled backpack (UPC# 676824030983)
23 (the “Products”) that expose persons to DEHP when used for their intended purpose.

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 reproductive toxicity. In summary, the DEHP was listed under Proposition 65 as a chemical known
2 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. Dermal absorption of DEHP can occur through direct skin contact when the Products
5 are contacted with bare hands or exposed skin. Finally, while mouthing of the Products does not
6 seem likely, some amount of exposure through ingestion can occur by touching the Products with
7 subsequent touching of the user's hand to mouth.

8 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
9 and/or sold the Products in California since at least February 16, 2021. The Products continue to
10 be distributed and sold in California without the requisite warning information.

11 25. At all times relevant to this action, Defendants have knowingly and intentionally
12 exposed users of the Products to DEHP without first giving a clear and reasonable exposure
13 warning to such individuals.

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

20 **SATISFACTION OF NOTICE REQUIREMENTS**

21 27. Plaintiff purchased the Product from Bob Perani. At the time of purchase, Winnwell
22 and Bob Perani did not provide a Proposition 65 exposure warning for DEHP or any other
23 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
24 *supra*.

25 28. The Product was sent to a testing laboratory to determine the phthalate
26 concentration of the Product.

27 29. The laboratory provided the results of its analysis. Results of this test concluded
28 there was excess presence of DEHP content (the "Chemical Test Report").

1 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
2 this Complaint as though fully set forth herein.

3 37. Use of the Products will expose consumers to DEHP, a hazardous chemical found
4 on the Proposition 65 list of chemicals known to be hazardous to human health.

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

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

8 40. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since February 16, 2021, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Products
11 to DEHP without providing required warnings under Proposition 65.

12 41. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the Products. Consequently, the primary route of
14 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur
15 through direct skin contact when the Products are contacted with bare hands or exposed skin.
16 Finally, while mouthing of the Products does not seem likely, some amount of exposure through
17 ingestion can occur by touching the Products with subsequent touching of the user's hand to mouth.

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

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

25 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
26 Complaint.

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

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
5 relief:

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

14
15 Dated: January 19, 2022

BRODSKY & SMITH

16 By:  _____

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