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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/30/2022
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 SHAF INTERNATIONAL, INC. dba
15 MILWAUKEE LEATHER, WALMART,
16 INC.,

17 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

CGC-22-598943

18 Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the following
19 cause of action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest
28 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
Milwaukee Performance satchel/arm bags sold and/or distributed by defendant Shaf Interntional,

1 Inc., dba Milwaukee Leather (“Shaf”) and/or defendant Walmart, Inc., (“Walmart”) (collectively,
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 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, Milwaukee Performance satchel/arm bags (the “Products”)
23 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.

28

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

18 13. Defendant Walmart, 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 Walmart 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 San Francisco because one or more of the
25 instances of wrongful conduct occurred and continue to occur in this county and/or because
26 Defendants conducted, and continue to conduct, business in the County of San Francisco with
27 respect to the Products.

1 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
2 reproductive toxicity.

3 23. 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 or other exposed skin.
7 Additionally, some amount of exposure through ingestion will occur by touching the Products with
8 subsequent touching of the user's hand to mouth.

9 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
10 and/or sold the Products in California since at least March 31, 2021. The Products continue to be
11 distributed and sold in California without the requisite warning information.

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

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

21 SATISFACTION OF NOTICE REQUIREMENTS

22 27. On February 18, 2021, Plaintiff purchased the Product from Walmart. At the time
23 of purchase, Walmart and Shaf did not provide a Proposition 65 exposure warning for DEHP or
24 any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as
25 described *supra*.

26 28. On or about March 25, 2021, the Product was sent to a testing laboratory for
27 phthalate testing to determine the phthalate content of the Product.

1 29. On March 29, 2022, the laboratory provided the results of its analysis. Results of
2 this test determined the Product exposes users to DEHP (the “Chemical Test Report”).

3 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
4 to determine if, based on the findings of the Chemical Test Report and the reasonable and
5 foreseeable use of the Product, exposure to DEHP will occur at levels that require Proposition 65
6 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
7 Code of Regulations.

8 31. On March 30, 2022, Plaintiff received from the analytical chemist an exposure
9 assessment report which concluded that persons in California who use the Products will be exposed
10 to levels of DEHP that require a Proposition 65 exposure warning.

11 32. On March 31, 2021, Plaintiff gave notice of alleged violation of Health and Safety
12 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
13 DEHP from use of the Products without proper warning, subject to a private action to Defendants
14 and to the California Attorney General’s office and the offices of the County District attorneys and
15 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
16 violations allegedly occurred.

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

22 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of
23 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
24 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
25 are the subject of the Notice.

26 35. Plaintiff is commencing this action more than sixty (60) days from the date of the
27 Notice to Defendants, as required by law.
28

1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendants for the Violations of Proposition 65)**

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

5 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
6 of the Products.

7 38. Use of the Products will expose users and consumers thereof to DEHP, a hazardous
8 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

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

10 40. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since March 31, 2021, continuing until the present, that Defendants have
12 continued to knowingly and intentionally expose California users and consumers of the Products
13 to DEHP without providing required warnings under Proposition 65.

14 41. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the Products. Consequently, the primary route of
16 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur
17 through direct skin contact when the Products are contacted with bare hands or exposed skin.
18 Additionally, some amount of exposure through ingestion will occur by touching the Products with
19 subsequent touching of the user's hand to mouth.

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

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

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

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
7 relief:

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

11 B. That the court preliminarily and permanently enjoin Defendants, mandating
12 Proposition 65 compliant warnings on the Products;

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

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

16 Dated: March 30, 2022

BRODSKY & SMITH

17 By:  _____

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