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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**01/13/2022**  
Clerk of the Court  
BY: KAREN VALDES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

**CGC-22-597630**

9 GABRIEL ESPINOZA,

10 Plaintiff,

11 vs.

12 WRIGHT & MCGILL CO.,

13 DICK'S SPORTING GOODS, INC.,

14 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People's right to be informed of the health  
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Eagle  
27 Claw Canvas Creel Bags, sold and/or distributed by defendant Wright & McGill Co. ("Wright &  
28

1 McGill”) and/or defendant Dick’s Sporting Goods, Inc. (“Dick’s”) (collectively, “Defendants”) in  
2 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, Eagle Claw Canvas Creel Bags (the “Products”) that expose  
23 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 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 Wright & McGill, through its business, effectively imports, distributes,  
14 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
15 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
16 Plaintiff alleges that defendant Wright & McGill is a “person” in the course of doing business  
17 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

18 13. Defendant Dick’s, 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 Dick’s 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 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 May 14, 2021. The Products continue to be  
10 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 Dick's. At the time of purchase, Wright &  
22 McGill and Dick's 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 May 14, 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.

