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

**08/10/2022**  
Clerk of the Court  
BY: LAURA SIMMONS  
Deputy Clerk

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

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 HARVEST VICTORY LTD., DOLLAR  
15 KINGS, INC. dba DOLLAR KING  
16 BURBANK, and DOES 1 through 100,  
17 inclusive,

18 Defendants.

Case No.:

**CGC-22-601191**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

19 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following  
20 cause of action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

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

28 2. This complaint is a representative action brought by Plaintiff in the public interest  
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 K-  
Cliffs purses sold and/or distributed by defendant Harvest Victory Ltd. (“Harvest Victory”) and/or

1 defendant Dollar Kings, Inc. dba Dollar King Burbank (“Dollar Kings”) (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 to be imposed upon defendants in a civil action for violations of Proposition 65.  
17 Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent  
18 jurisdiction to enjoin the actions of a defendant which “violate or threaten to violate” the statute.  
19 Health & Safety Code § 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
21 without a requisite exposure warning, K-Cliffs purses (the “Products”) that expose persons to  
22 DEHP when used for their intended purpose.

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

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).

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

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

6 **PARTIES**

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

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

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

21 14. DOES 1 through 100 are each a person in the course of doing business within the  
22 meaning of Health & Safety Code sections 25249.6 and 25249.11. DOES 1 through 100 through  
23 their business, effectively import, distribute, sell, and/or offer the Products for sale or use in the  
24 State of California, or it imply by their conduct that they import, distribute, sell, and/or offer the  
25 Products for sale or use in the State of California

26 15. The true names of DOES 1 through 100 are either unknown to Plaintiff at this time  
27 or the applicable time period before which plaintiff may file a Proposition 65 action has not run.  
28

1 When their identities are ascertained or the applicable time period before which plaintiff may file  
2 a Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

3 **VENUE AND JURISDICTION**

4 16. Venue is proper in the County of San Francisco because one or more of the  
5 instances of wrongful conduct occurred and continue to occur in this county and/or because  
6 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
7 respect to the Products.

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

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

19 **STATUTORY BACKGROUND**

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

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

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

1           21.     An exposure to a chemical in a consumer product is one “which results from a  
2 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
3 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
4 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
5 shall provide a warning to any person to whom the product is sold or transferred unless the product  
6 is packaged or labeled with a clear and reasonable warning.”

7           22.     Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
8 more of the following methods individually or in combination:<sup>1</sup>

9           a.       A warning that appears on a product’s label or other labeling.

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

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

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

20           23.     Proposition 65 provides that any “person who violates or threatens to violate” the  
21 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
22 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
23 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
24  
25

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26  
27 <sup>1</sup> 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 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
2 365 days.

3 **FACTUAL BACKGROUND**

4 24. On January 1, 1988, the State of California listed DEHP as a chemical known to  
5 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 25. The exposures that are the subject of the Notice result from the purchase,  
10 acquisition, handling and recommended use of the Product. The primary route of exposure to the  
11 is through dermal absorption directly through the skin when consumers use, touch, or handle the  
12 Products. Exposure through ingestion will occur by touching the Product with subsequent touching  
13 of the user's hand to mouth. No clear and reasonable warning is provided with the Products  
14 regarding the health hazards of exposure.

15 26. Defendants have manufactured, processed, marketed, distributed, offered to sell  
16 and/or sold the Products in California since at least August 11, 2021. The Products continue to be  
17 distributed and sold in California without the requisite warning information.

18 27. At all times relevant to this action, Defendants have knowingly and intentionally  
19 exposed users of the Products to DEHP without first giving a clear and reasonable exposure  
20 warning to such individuals.

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

27 **SATISFACTION OF NOTICE REQUIREMENTS**

1           29.     On July 12, 2021, Plaintiff purchased the Product from Dollar Kings. At the time  
2 of purchase, Dollar Kings and Harvest Victory did not provide a Proposition 65 exposure warning  
3 for DEHP or any other Proposition 65 listed chemical in a manner consistent with H&S Code §  
4 25603.1 as described *supra*.

5           30.     The Product was sent to a testing laboratory for phthalate testing to determine the  
6 phthalate content of the Product.

7           31.     On August 6, 2021, the laboratory provided the results of its analysis. Results of  
8 this test determined the Product exposes users to DEHP (the “Chemical Test Report”).

9           32.     Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
10 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
11 foreseeable use of the Product, exposure to DEHP will occur at levels that require Proposition 65  
12 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
13 Code of Regulations.

14           33.     On August 11, 2021, Plaintiff received from the analytical chemist an exposure  
15 assessment report which concluded that persons in California who use the Products will be exposed  
16 to levels of DEHP that require a Proposition 65 exposure warning.

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

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

28





1 45. Defendants have knowledge that the normal and reasonably foreseeable use of the  
2 Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur  
3 by their deliberate, non-accidental participation in the importation, distribution, sale and offering  
4 of the Products to consumers in California

5 46. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
6 Complaint.

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
13 relief:

14 A. That the court assess civil penalties against each defendant in the amount of \$2,500  
15 per day for each violation for up to 365 days in accordance with Health and Safety Code §  
16 25249.7(b);

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

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

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

22 Dated: August 10, 2022

BRODSKY & SMITH

23 By:  \_\_\_\_\_

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