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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

12/14/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-22-603481**

12 DONATUS MCCOY,

13 Plaintiff,

14 vs.

15 VOLAR FASHION, LLC, BIG 5 CORP.,

16 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Donatus McCoy (“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.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff brings this representative action on behalf of all California citizens to
21 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
22 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
23 “[n]o person in the course of doing business shall knowingly and intentionally expose any
24 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
25 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
Wallets with item number item # NGI-2252, UPC #888872045486 sold and/or distributed by

1 defendant Volar Fashion, LLC (“Volar”) and/or defendant Big 5 Corp. (“Big 5”) (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, Wallets with item number item # NGI-2252, UPC
22 #888872045486 (the “Products”) that expose persons to DEHP when used for their intended
23 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 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 Product. The primary route of exposure to the
5 is through dermal absorption directly through the skin when consumers use, touch, or handle the
6 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
7 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
8 regarding the health hazards of exposure.

9 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
10 and/or sold the Products in California since at least December 28, 2021. The Products continue to
11 be 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 November 18, 2021, Plaintiff purchased the Product from Big 5. At the time of
23 purchase, Big 5 and Volar did not provide a Proposition 65 exposure warning for DEHP or any
24 other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
25 *supra*.

26 28. On or about December 8, 2021, the Product was sent to a testing laboratory for
27 phthalate testing to determine the phthalate content of the Product.

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

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

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

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

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

9 40. Plaintiff, based on his best information and belief, avers that at all relevant times
10 herein, and at least since December 28, 2021, continuing until the present, that Defendants have
11 continued to knowingly and intentionally expose California users and consumers of the Products
12 to DEHP without providing required warnings under Proposition 65.

13 41. The exposures that are the subject of the Notice result from the purchase,
14 acquisition, handling and recommended use of the Product. The primary route of exposure to the
15 is through dermal absorption directly through the skin when consumers use, touch, or handle the
16 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
17 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
18 regarding the health hazards of exposure.

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

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

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

28

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 in accordance with Health and Safety Code §
10 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: December 14, 2022

BRODSKY & SMITH

17 By:  _____

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