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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

01/20/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

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

11 DONATUS MCCOY,

12 Plaintiff,

13 vs.

14 VIDA SHOES INTERNATIONAL,
15 INC.,

16 Defendant.

Case No.:

CGC-23-604148

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Donatus McCoy (“McCoy” or “Plaintiff”), by and through his attorneys, alleges
18 the following cause of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff bring 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 against defendant Vida Shoes International, Inc. (“Vida
28 Shoes” or “Defendant”) to enforce the People’s right to be informed of the health hazards caused

1 by exposure to bisphenol A (BPA) from the use of women’s heels’ that are manufactured,
2 distributed, offered for sale and/or sold by Vida Shoes in California.

3 3. BPA is a harmful chemical known to the State of California to cause reproductive
4 toxicity. On May 11, 2015, the State of California listed BPA as a chemical known to the State to
5 cause reproductive toxicity and BPA has come under the purview of Proposition 65 regulations
6 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
7 25249.10(b).

8 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
9 within California or sell products therein to comply with Proposition 65 regulations. Included in
10 such regulations is the requirement that businesses must label any product containing a Proposition
11 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
12 exposing any person to any such listed chemical.

13 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
14 for up to 365 days to be imposed upon defendants in a civil action for violations of Proposition 65.
15 Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent
16 jurisdiction to enjoin the actions of a defendant which “violate or threaten to violate” the statute.
17 Health & Safety Code § 25249.7.

18 6. Plaintiff alleges that Vida Shoes distributes and/or offers for sale in California,
19 without a requisite Proposition 65 exposure warning, women’s heels’ including, but not limited to
20 Zoey XOXO, Style # XO221700 heels (the “Products”) that expose persons to BPA when used as
21 intended and/or for their intended purpose.

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

26 8. Plaintiff seeks civil penalties against Vida Shoes for its violations of Proposition 65
27 in accordance with Health and Safety Code § 25249.7(b).

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Vida Shoes to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to BPA from use of the Products pursuant to Health and Safety Code § 25249.7(a).

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

PARTIES

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

12. Defendant Vida Shoes, through its business, effectively imports, distributes, sells and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells and/or offers the Products for sale or use in the State of California.

13. Plaintiff allege that defendant Vida Shoes is a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

14. Venue is proper in the County of San Francisco because one or more of the instances of wrongful conduct occurred and continues to occur in this county and/or because Vida Shoes conducted, and continues to conduct, business in the County of San Francisco with respect to the Products.

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

16. This Court has jurisdiction over Vida Shoes because Defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business

1 in the State of California and/or has otherwise purposefully availed itself of the California market.
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
3 and permissible with traditional notions of fair play and substantial justice.

4 **STATUTORY BACKGROUND**

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

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

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

14 19. An exposure to a chemical in a consumer product is one “which results from a
15 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
16 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
17 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
18 shall provide a warning to any person to whom the product is sold or transferred unless the product
19 is packaged or labeled with a clear and reasonable warning.”

20 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
21 more of the following methods individually or in combination:¹

- 22 a. A warning that appears on a product’s label or other labeling.
- 23 b. Identification of the product at the retail outlet in a manner which provides
24 a warning. Identification may be through shelf labeling, signs, menus, or a combination
25 thereof.

26
27 ¹ 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 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet
3 with such conspicuousness, as compared with other words, statements, designs, or devices
4 in the label, labeling or display as to render it likely to be read and understood by an
5 ordinary individual under customary conditions of purchase or use.

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

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
13 365 days.

14 **FACTUAL BACKGROUND**

15 22. On May 11, 2015, the State of California listed BPA as a chemical known to the
16 State to cause reproductive toxicity and BPA has come under the purview of Proposition 65
17 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8
18 & 25249.10(b).

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

25 24. Vida Shoes has distributed, offered to sell and/or sold the Products in California
26 since at least January 27, 2022. The Products continue to be distributed and sold in California
27 without a requisite Proposition 65 compliant BPA exposure warning.

1 32. On January 27, 2022, Plaintiff gave notice of alleged violation of Health and Safety
2 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to BPA
3 from use of the Products without proper warning, subject to a private action to Defendant and to
4 the California Attorney General’s office and the offices of the County District attorneys and City
5 Attorneys for each city with a population greater than 750,000 persons wherein the herein
6 violations allegedly occurred.

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

12 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of
13 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
14 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
15 the subject of the Notice.

16 35. Plaintiff is commencing this action more than sixty (60) days from the date of the
17 Notice to Defendant, as required by law.

18 **FIRST CAUSE OF ACTION**

19 **(By Plaintiff against Defendant for its Violation of Proposition 65)**

20 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
21 this first amended complaint as though fully set forth herein.

22 37. Defendant has, at all times mentioned herein, acted as a distributor and/or retailer
23 of the Products.

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

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

27 40. Plaintiff, based on his best information and belief, avers that at all relevant times
28 herein, and at least since January 27, 2022, continuing until the present, that Defendant has

1 continued to knowingly and intentionally expose California users and consumers of the Products
2 to BPA without providing required warnings under Proposition 65.

3 41. 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 BPA
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 to BPA.

9 42. Plaintiff, based on his best information and belief, avers that such exposures will
10 continue every day until clear and reasonable warnings are provided to purchasers and users or
11 until BPA is removed from the Products.

12 43. Defendant has knowledge that the normal and reasonably foreseeable use of the
13 Product exposes individuals to BPA, and Defendant intends those exposures to BPA will occur by
14 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
15 Products to consumers in California.

16 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to the
17 filing of the first amended complaint.

18 45. Pursuant to Health and Safety Code § 25249.7(b), because of the above-described
19 acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
3 relief:

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

7 B. That the Court preliminarily and permanently enjoin Defendant mandating
8 Proposition 65 compliant warnings on the Products;

9 C. That the Court grant Plaintiff reasonable attorney's fees and costs of suit, in the
10 amount of \$50,000.00.

11 D. That the Court grant any further relief as may be just and proper.

12 Dated: January 20, 2023

BRODSKY & SMITH

13 By:  _____

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