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

**06/01/2023**  
Clerk of the Court

BY: MARK UDAN  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

**CGC-23-606876**

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 OLIVET INTERNATIONAL, INC.,  
15 WALMART, INC.,

16 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

17 Plaintiff Gabriel Espinoza (“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 and birth defects or other reproductive  
25 harm without first giving clear and reasonable warning to such individual ...”. Health & Safety  
26 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 *My  
Life As®* backpacks, UPC # 618842396870, sold and/or distributed by defendants Olivet

1 International, Inc. (“Olivet”) and Walmart, Inc. (“Walmart”) (collectively, “Defendants”) in  
2 California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
4 birth defects or other reproductive harm. On January 1, 1988, the State of California listed DEHP  
5 as a chemical known to the State to cause cancer and it has come under the purview of Proposition  
6 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
7 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
8 known to cause birth defects or other reproductive harm.

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, *My Life As*® backpacks, UPC # 618842396870 (the  
23 “Products”) 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.

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

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

#### 12 STATUTORY BACKGROUND

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

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

20 No person in the course of doing business shall knowingly and intentionally expose any  
 21 individual to a chemical known to the state to cause cancer and birth defects or other  
 22 reproductive harm without first giving clear and reasonable warning to such individual...

23 19. An exposure to a chemical in a consumer product is one “which results from a  
 24 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
 25 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
 26 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
 27 shall provide a warning to any person to whom the product is sold or transferred unless the product  
 28 is packaged or labeled with a clear and reasonable warning.”



1 On October 24, 2003, the State of California listed DEHP as a chemical known to cause birth  
2 defects or other reproductive harm.

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 July 8, 2022. 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. Plaintiff purchased the Product from Walmart. At the time of purchase, Walmart  
23 and Olivet did not provide a Proposition 65 exposure warning for DEHP or any other Proposition  
24 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

25 28. On or about June 10, 2022, the Product was sent to a testing laboratory for phthalate  
26 testing to determine the phthalate content of the Product.

27 29. On June 21, 2022, the laboratory provided the results of its analysis. Results of this  
28 test determined the Product exposes users to DEHP (the "Chemical Test Report").

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

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

9           32.     On July 8, 2022, Plaintiff gave notice of alleged violation of Health and Safety  
10 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to  
11 DEHP from use of the Products without proper warning, subject to a private action to Defendants  
12 and to the California Attorney General’s office and the offices of the County District attorneys and  
13 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
14 violations allegedly occurred.

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

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

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

**FIRST CAUSE OF ACTION**

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

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

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

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

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

40. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since July 8, 2022, continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Products to DEHP without providing required warnings under Proposition 65.

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

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

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

44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this 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: June 1, 2023

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