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County of Alameda
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

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14 MICHAEL DIPIRRO,

15 Plaintiff,

16 v.

17 SWORD OF THE LORD FOUNDATION; and
18 DOES 1-150,

19 Defendants.

Case No. **23CV051438**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code. § 25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MICHAEL
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of Diethylhexyl phthalate (“DINP”), a toxic chemical, for
5 exposures created by the use of Tract Wallets sold in California (hereafter referred to as
6 PRODUCTS).

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to DINP from the use of the PRODUCTS
9 that are manufactured, distributed, and/or offered for sale or use to consumers throughout the
10 State of California without the requisite health hazard warnings.

11 3. Exposure to high levels of DINP are commonly produced through the normal and
12 foreseeable use of PRODUCTS that defendants manufacture, distribute, and/or offer for sale to
13 consumers throughout the State of California without requisite health hazard warnings.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
15 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
16 doing business shall knowingly and intentionally expose any individual to a chemical known to
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual” Health & Safety Code § 25249.6.

19 5. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
20 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
21 warning” requirements of the act one year later on December 20, 2014, for cancer. Cal. Code
22 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to
23 hereinafter as the “LISTED CHEMICAL.”

24 6. Defendants manufacture or otherwise process for sale, distribute, and sell Tract
25 Wallets, the normal and foreseeable use of which results in exposure to DINP at levels that
26 require health hazard warnings under Proposition 65.

1 assemble, fabricate, cultivate, harvest and/or manufacture one or more of the PRODUCTS
2 offered for sale or use in the State of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
6 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
7 in the State of California.

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
9 the course of doing business within the meaning of Health and Safety Code section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

12 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
13 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
14 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
15 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
16 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
17 Specifically named defendants and all “Doe” Defendants are hereinafter collectively referred to
18 as “DEFENDANTS”.

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20 **VENUE AND JURISDICTION**

21 20. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
22 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
23 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
24 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
25 county with respect to the PRODUCTS.

26 21. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, section 10, which grants the Superior Court “original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

3 22. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that is a citizen of the State of California, has sufficient minimum contacts in the
6 State of California, and/or otherwise purposefully avails itself of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

11 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 22, inclusive.

13 24. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
15 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
16 harm.”

17 25. Proposition 65 states, “[n]o person in the course of doing business shall
18 knowingly and intentionally expose any individual to a chemical known to the state to cause
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such
20 individual” Health & Safety Code § 25249.6.

21 26. On July 31, 2023, plaintiff’s 60-Day Notice of Violation, together with the
22 requisite certificate of merit, was provided to SWORD and certain public enforcement agencies
23 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
24 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
25 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
26 individual purchasers and users first having been provided with a “clear and reasonable
27 warning” regarding such toxic exposures, as required by Proposition 65.

1 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
3 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day
4 Notices of Violation. As such, DEFENDANTS' violations are ongoing and continuous in
5 nature, and will continue to occur in the future.

6 28. After receiving the claims asserted in the 60-day Notices of Violation, the
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a
8 cause of action against DEFENDANTS under Proposition 65.

9 29. The PRODUCTS manufactured, distributed, and offered for sale or use in
10 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
11 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
12 65.

13 30. DEFENDANTS knew or should have known that the PRODUCTS they
14 manufacture, distribute, and offer for sale or use in California contain the LISTED
15 CHEMICAL.

16 31. The exposures to the LISTED CHEMICAL result from the normal use of the
17 PRODUCTS in such a way as to expose individuals through dermal contact during reasonably
18 foreseeable use.

19 32. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
20 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
21 defined by California Code of Regulations title 27, section 25602(b).


22 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
23 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact.

24 34. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
25 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
26 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
27 sale or use to individuals in the State of California.

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Dated: November 15, 2023

Respectfully Submitted,

By: 

David Bush
Jeremy Fietz
Attorneys for Plaintiff
MICHAEL DIPIRRO