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MICHAEL DIPIRRO

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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Alameda  
**10/05/2023 at 10:08:58 AM**  
By: Milagros Cortez,  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,  
Plaintiff,  
v.  
DALCO ATHLETIC LETTERING, INC.; and  
DOES 1-150,  
Defendants.

Case No. **23CV04662**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code. § 25249.6 *et seq.*)

1 NATURE OF THE ACTION

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3 1. This Complaint is a representative action brought by plaintiff MICHAEL  
4 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s  
5 right to be informed of the presence of Diethylhexyl phthalate (“DEHP”), a toxic chemical, for  
6 exposures created by the use of Umpire Game Wallets sold in California, including but not  
7 limited to the Dalco Game Wallet, Model #DB3501; BD3501-Grey-o/s.

8 2. Defendants manufacture or otherwise process for sale, distribute, and sell  
9 Umpire Game Wallets including, but not limited to the Dalco Game Wallet, Model  
10 #DB3501; BD3501-Grey-o/s, the normal and foreseeable use of which results in  
11 exposure to DEHP at levels that require health hazard warnings under Proposition  
12 65. All such products are referred to collectively hereinafter as the  
13 “PRODUCTS.”

14 3. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
15 warn California citizens about the risk of exposure to DEHP from the use of the PRODUCTS  
16 that are manufactured, distributed, and/or offered for sale or use to consumers throughout the  
17 State of California without the requisite health hazard warnings.

18 4. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
19 warn California citizens about the risk of exposure to DEHP in the PRODUCTS that are  
20 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of  
21 California.

22 5. Exposure to high levels of DEHP are commonly produced through the normal and  
23 foreseeable use of the PRODUCTS that defendants manufacture, distribute, and/or offer for sale  
24 to consumers throughout the State of California without requisite health hazard warnings.

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

3 7. Pursuant to Proposition 65, on January 1, 1988, California identified and listed  
4 DEHP as a chemical known to cause cancer. DEHP became subject to the “clear and  
5 reasonable warning” requirements of the act one year later on January 1, 1988, for cancer. On  
6 October 24, 2003, California identified and listed DEHP as a chemical known to cause  
7 developmental toxicity (male). DEHP became subject to the “clear and reasonable warning”  
8 requirements of the act one year later on October 24, 2004, for developmental toxicity (male).  
9 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is  
10 referred to hereinafter as the “LISTED CHEMICAL.”

11 8. Defendants’ failure to warn consumers and other individuals in the State of  
12 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’  
13 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
14 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)  
15 & (b)(1).

16 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
17 permanent injunctive relief to compel defendants to provide purchasers or users of the  
18 PRODUCTS with the required warning regarding the health hazards of the LISTED  
19 CHEMICAL. Health & Safety Code § 25249.7(a).

20 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
21 penalties against defendants for their violations of Proposition 65.

22 **PARTIES**

23 11. Plaintiff MICHAEL DIPIRRO is a citizen of the State of California who is  
24 dedicated to protecting the health of California citizens through the elimination or reduction of  
25 toxic exposures from consumer products; and he brings this action in the public interest  
26 pursuant to Health and Safety Code section 25249.7(d).

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1           12. Defendant DALCO ATHLETIC LETTERING, INC. ("DALCO")  
2 is a person in the course of doing business within the meaning of Health and Safety Code  
3 section 25249.11.

4           13. DALCO manufactures (or otherwise processes for sale), distributes, and/or offers  
5 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
6 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
7 California.

8           14. Defendants DOES 1 -50 ("MANUFACTURER DEFENDANTS") are each a  
9 person in the course of doing business within the meaning of Health and Safety Code section  
10 25249.11.

11           15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
12 cultivate, harvest and/or manufacture, or imply by their conduct that they research, test, design,  
13 assemble, fabricate, cultivate, harvest and/or manufacture one or more of the PRODUCTS  
14 offered for sale or use in the State of California.

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

17           17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
18 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
19 in the State of California.

20           18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
21 the course of doing business within the meaning of Health and Safety Code section 25249.11.

22           19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
23 State of California.

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

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5 **VENUE AND JURISDICTION**

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

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

15 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
16 plaintiffs information and good faith belief that each defendant is a person, firm, corporation or  
17 association that is a citizen of the State of California, has sufficient minimum contacts in the  
18 State of California, and/or otherwise purposefully avails itself of the California market.  
19 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
20 California courts consistent with traditional notions of fair play and substantial justice.

21 **FIRST CAUSE OF ACTION**

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

23 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
24 Paragraphs 1 through 48, inclusive.

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

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

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

14           28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
15 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and such  
16 violations have continued to occur beyond DEFENDANTS’ receipt of plaintiffs 60-Day Notices  
17 of Violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and  
18 will continue to occur in the future.

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

22           30. The PRODUCTS manufactured, distributed, and offered for sale or use in  
23 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the allowable  
24 state limits, such that they require a “clear and reasonable” warning under Proposition 65.

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1           31. DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, distribute, and offer for sale or use in California contain the LISTED  
3 CHEMICAL.

4           32. The exposures to the LISTED CHEMICAL result from the normal use of the  
5 PRODUCTS in such a way as to expose individuals through dermal contact during reasonably  
6 foreseeable use.

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

10          34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
11 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact.

12          35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
13 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-  
14 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
15 sale or use to individuals in the State of California.

16          36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
17 consumers and other individuals in the State of California who were or who would become  
18 exposed to the LISTED CHEMICAL through dermal contact during the reasonably foreseeable  
19 uses of the PRODUCTS.

20          37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
21 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
22 contact resulting from the reasonably foreseeable use of the PRODUCTS sold by  
23 DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to  
24 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

25          38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
26 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
27 for each violation.

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