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David W. Slayton,
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By Y. Ayala, Deputy Clerk

6 Attorney for MONARCH LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

12 MONARCH LLC,) Unlimited Jurisdiction
13)
14 Plaintiff,)
15) CASE NO. **24STCV11972**
16 vs.)
17)
18 MCC BRANDS, LLC; and DOES 1 through) COMPLAINT FOR CIVIL PENALTY AND
19 100, Inclusive,) INJUNCTIVE RELIEF
20)
21 Defendants.) (Health & Safety Code § 25249.5 et seq.)
22)
23)
24)
25)
26)
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28)

1 Plaintiff, MONARCH LLC, hereby alleges:

2 **I. PRELIMINARY STATEMENT**

3 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure to
4 Di(2-ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer and
5 reproductive harm.

6 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety
7 Code § 25249.6 (also known as “Proposition 65”) businesses must provide persons with a “clear and
8 reasonable warning” before exposing individuals to chemicals known to the state to cause cancer, birth
9 defects or other reproductive harm.

10 3. Plaintiff alleges a violation of Proposition 65 in product(s) sold by Defendant without
11 first giving clear and reasonable warning.

12 **II. PARTIES**

13 4. Plaintiff is a limited liability company formed pursuant to the laws of the State of
14 California, made up of California citizens, represented by and through its counsel of record, the
15 Greenbaum Law Firm.

16 5. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65 may
17 be brought by “any person in the public interest.”

18 6. Defendant MCC BRANDS, LLC is a business entity with ten or more employees that
19 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of
20 vinyl/mesh art bag products manufactured by or for Defendant, imported by or for Defendant, or
21 distributed or sold by or for Defendant, including, but not limited to, KINGART® 19" x 25"
22 Vinyl/Mesh Bag With Handle, that contains DEHP, for sale within the State of California, without first
23 giving clear and reasonable warning.

24 7. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
25 Plaintiff suspects they are business entities with at least ten or more employees that at all times relevant
26 to this complaint, authorized the manufacture, distribution, or sale of vinyl/mesh art bag products
27 manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for

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1 Defendant, including, but not limited to, KINGART® 19" x 25" Vinyl/Mesh Bag With Handle, that
2 contains DEHP, for sale within the State of California, without first giving clear and reasonable
3 warning.

4 8. Defendant named in paragraphs 6 through 8 have at all times relevant to this complaint,
5 authorized the manufacture, distribution, or sale of vinyl/mesh art bag products manufactured by or for
6 Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but not
7 limited to, KINGART® 19" x 25" Vinyl/Mesh Bag With Handle, that contains DEHP (hereinafter
8 “PRODUCT(S)”), for sale within the State of California, without first giving clear and reasonable
9 warning.

10 III. JURISDICTION AND VENUE

11 9. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
12 because this case is a cause not given by statute to other trial courts.

13 10. This Court has jurisdiction over Defendant, because they are business entities that do
14 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
15 themselves of the California market, through the sale, marketing, and use of its products in California,
16 to render the exercise of jurisdiction over it by the California courts consistent with traditional notions
17 of fair play and substantial justice.

18 11. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
19 County because Defendant’s products are sold and consumed in this county.

20 IV. STATUTORY BACKGROUND

21 12. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
22 passed as “Proposition 65” by a vote of the people in November of 1986.

23 13. The warning requirement of Proposition 65 is contained in Health & Safety Code §
24 25249.6, which provides:

25 No person in the course of doing business shall knowingly and intentionally
26 expose any individual to a chemical known to the state to cause cancer or
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1 reproductive toxicity without first giving clear and reasonable warning to
2 such individual, except as provided in Section 25249.10.

3 14. An exposure to a chemical in a consumer product is one “which results from a person’s
4 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
5 or any exposure that results from receiving a consumer service.” (27 CCR 25602(b))

6 15. Proposition 65 establishes a procedure by which the State develops a list of chemicals
7 “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code § 25249.8.)

8 16. No warning need be given concerning a listed chemical until one year after the chemical
9 first appears on the list. (Health & Safety Code § 25249.10(b).)

10 17. Any person “violating or threatening to violate” the statute may be enjoined in any court
11 of competent jurisdiction. (Health & Safety Code, § 25249.7.)

12 18. To “threaten to violate” is defined to mean “to create a condition in which there is a
13 substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

14 19. In addition, violators are liable for civil penalties of up to \$2,500 per day for each
15 violation, recoverable in a civil action. (Health & Safety Code § 25249.7 (b).)

16 20. Actions to enforce the law “may be brought by the Attorney General in the name of the
17 People of the State of California [or] by any district attorney [or] by any City Attorney of a City having
18 a population in excess of 750,000 . . .” (Health & Safety Code § 25249.7(c).)

19 21. Private parties are given authority to enforce Proposition 65 “in the public interest,” but
20 only if the private party first provides written notice of a violation to the alleged violator, the Attorney
21 General, and every District Attorney in whose jurisdiction the alleged violation occurs.

22 22. If no public prosecutors commence enforcement within sixty days, then the private party
23 may sue. (Health & Safety Code § 25249.7(d).)

24 **V. FACTS**

25 23. DEHP was placed on the Governor’s list of chemicals known to the State to cause cancer
26 on January 1, 1988. (27 CCR 27001(b))

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1 24. DEHP was placed on the Governor’s list of chemicals known to the State to cause
2 reproductive toxicity on October 24, 2003. (27 CCR 27001(b))

3 25. Defendant MCC BRANDS, LLC has a business relationship with the online retail
4 platform Walmart.com.

5 26. Plaintiff purchased the PRODUCT(S) from www.walmart.com on or about May 12,
6 2023.

7 27. Walmart.com facilitated and completed the financial transaction and managed delivery
8 of the PRODUCT(S).

9 28. Neither the PRODUCT’S online listing, nor the PRODUCT itself, contained or
10 presented a Proposition 65 warning label.

11 29. On or about June 26, 2023, Plaintiff’s expert prepared a report summarizing the results
12 of analysis on the PRODUCT(S), including the amount of the DEHP in the PRODUCT(S).

13 30. Based on the levels, Plaintiff’s expert opined that use of the PRODUCT(S) would lead
14 to exposure to DEHP above the safe harbor levels set by the Office of Environment Health Hazard
15 Assessment (OEHHA).

16 31. Based on that report and opinion, and lack of warning labels on the PRODUCT, Plaintiff
17 and its counsel prepared a Sixty Notice of Violation.

18 32. Pursuant to the statute and regulations referenced above, on October 9, 2023, Plaintiff
19 served a Notice of Violation on the Office of the Attorney General, Defendant, as well as all required
20 public agencies.

21 33. Plaintiff is unaware of any governmental prosecution against Defendant.

22 34. At least sixty (60) days have elapsed since service of the Notice of Violation.

23 35. Based upon consultation with experts, Plaintiff alleges that individuals who purchase,
24 handle, or use the PRODUCT are exposed to DEHP chiefly through:

25 a. contact between the item and the skin;

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1 b. transfer of DEHP from the skin to the mouth, both by transfer of DEHP directly
2 from the hand to mouth, and indirectly by transfer of DEHP from the skin to objects that are
3 placed in the mouth, such as food; and

4 c. through absorption of DEHP through the skin.

5 36. Such individuals are thereby exposed to the DEHP that is present on or in the
6 PRODUCT during the intended and reasonably foreseeable use of the PRODUCT.

7 37. At all times material to this complaint, Defendant has had knowledge that the
8 PRODUCT contains DEHP and that an individual's skin may contact DEHP through the intended and
9 reasonably foreseeable use of the PRODUCT.

10 38. At all times material to this complaint, Defendant has had knowledge that individuals
11 within the State of California handle the PRODUCT, which contains DEHP.

12 39. At all times material to this complaint, Defendant knew that the PRODUCT was sold
13 throughout the State of California, and Defendant profited from such sales.

14 40. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized
15 the sale of the PRODUCT, thereby exposing consumers to DEHP.

16 41. PRODUCT was repurchased by Plaintiff on March 11, 2024 from Amazon.com; upon
17 receipt the product did not contain a warning, further displaying Defendant is not taking the Notice
18 seriously.

19 42. At all times material to this complaint, therefore, Defendant has knowingly and
20 intentionally exposed individuals within the State of California to DEHP.

21 43. The exposure is knowing and intentional because it is the result of the Defendant's
22 deliberate act of authorizing the sale of products known to contain DEHP, in a manner whereby these
23 products were, and would inevitably be, sold to consumers within the state of California, and with the
24 knowledge that the intended use of this PRODUCT(S) would result in exposures to DEHP by
25 individuals within the State of California.

26 44. Defendant has failed to provide clear and reasonable warnings that the use of the
27 PRODUCT in question in California results in exposure to a chemical known to the State of California

1 to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those
2 individuals by any other person.

3 **VI. FIRST CAUSE OF ACTION**

4 **(Against All Defendants for Violation of Proposition 65)**

5 45. Plaintiff incorporates and re-alleges by reference all the foregoing paragraphs as if fully
6 set forth herein.

7 46. By committing the acts alleged above, Defendant has, in the course of doing business,
8 knowingly and intentionally exposed individuals in California to chemicals known to the State of
9 California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
10 such individuals, within the meaning of Health & Safety Code § 25249.6.

11 47. Said violations render Defendant liable to Plaintiff for civil penalties not to exceed
12 \$2,500 per day for each violation, as well as other remedies.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays that the Court:

15 1. Pursuant to the First Cause of Action, grant civil penalties of \$2,500.00 per violation
16 per day, going back one year from the date of filing, which at the time of filing is at least
17 \$5,000.00;

18 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
19 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
20 exposing persons within the State of California to Listed Chemicals caused by the use of their
21 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further
22 application to the court;

23 3. Award Plaintiff the costs of suit;

24 4. Pursuant to Code of Civil Procedure § 1021.5, award Plaintiff their reasonable
25 attorney's fees and costs of at least \$[Y].00 as of the filing of this Complaint, and an anticipated
26 additional \$25,000.00 of attorney's fees to obtain a default judgment, if a default is entered; and

27 5. Grant such other and further relief as the court deems just and proper.

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DATED: May 13, 2024

Respectfully submitted,

GREENBAUM LAW FIRM



By: DANIEL N. GREENBAUM
Attorney for Plaintiff MONARCH