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

**12/02/2025**  
Clerk of the Court  
BY: DAEJA ROGERS

Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 HOME DEPOT U.S.A., INC.,

15 Defendant.

Case No.:

**CGC-25-631704**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

16 Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the following  
17 cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to  
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
20 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,  
21 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
23 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People's right to be informed of the health  
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
27 Vevor® bags sold and/or distributed by defendant Home Depot U.S.A., Inc. ("Home Depot" or  
28 "Defendant") in California.

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

7           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
8 within California or sell products therein to comply with Proposition 65 regulations. Included in  
9 such regulations is the requirement that businesses must label any product containing a Proposition  
10 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
11 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
12 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 Defendant distributes and/or offers for sale in California,  
19 without a requisite exposure warning, *Vevor*® bags (the “Products”) that expose persons to DEHP  
20 when used for their intended purpose.

21           7.       Defendant’s failure to warn consumers and other individuals in California of the  
22 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution  
23 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil  
24 penalties described herein.

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

27           9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendant to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code  
2 § 25249.7(a).

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

#### 4 **PARTIES**

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

9 12. Defendant Home Depot U.S.A., Inc., through its business, effectively imports,  
10 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
11 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the  
12 State of California. Plaintiff alleges that defendant Home Depot U.S.A., Inc. is a "person" in the  
13 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
14 25249.11.

#### 15 **VENUE AND JURISDICTION**

16 13. Venue is proper in the County of San Francisco because one or more of the  
17 instances of wrongful conduct occurred and continue to occur in this county and/or because  
18 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
19 respect to the Products.

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

25 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
26 the State of California, has sufficient minimum contacts with the State of California, is registered  
27 with the California Secretary of State as foreign corporations authorized to do business in the State  
28 of California, and/or has otherwise purposefully availed itself of the California market. Such

purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

### **STATUTORY BACKGROUND**

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

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

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

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

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

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

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<sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning 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       20.       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       21.       Pursuant to Cal. Code Regs. Tit. 27, § 25600.2(e), a retail seller is responsible for  
15 providing the warning required by § 25249.6 of the Act for a consumer product exposure when  
16 one or more of the following circumstances exist: (a) the retailer seller is selling the product under  
17 a brand or trademark that is owned or licensed by the retail seller or an affiliated entity; (b) the  
18 retailer seller has knowingly introduced a listed chemical into the product, or knowingly caused  
19 the listed chemical to be created in the product; (c) the retail seller has covered, obscured or altered  
20 a warning label that has been affixed to the product pursuant to § 25600.2(b); (d) the retail seller  
21 has received a notice and warning materials for the exposure pursuant to § 25600.2(b)-(c) and the  
22 retail seller has sold the product without conspicuously posting or displaying the warning; or (e)  
23 the retailer seller has actual knowledge of the potential consumer product exposure requiring the  
24 warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the  
25 product who: (i) is a "person in the course of doing business under § 25249.11(b) of the Act, and  
26 (ii) has designated an agent for service of process in California, or has a place of business in  
27 California.

**FACTUAL BACKGROUND**

22. On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to cause reproductive toxicity.

23. On June 4, 2025, Plaintiff purchased the Product from Defendant. At the time of the purchase, Defendant did not provide a clear and reasonable exposure warning pursuant to Cal. Code Regs. Tit. 27, § 25602.

24. On August 7, 2025, Plaintiff served notice of alleged violation of Health and Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to DEHP from use of the Products without proper warning, subject to a private action to Defendant and to the California Attorney General’s office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred. 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 chemical 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.

25. Defendant has actual knowledge that sales of the Product in California will result in an actionable consumer product exposure pursuant to Cal. Health & Safety Code § 25249.5 et seq.

26. Defendant has sold the Product under a brand or trademark that is owned or licensed by Defendant or an affiliated entity; and/or Defendant has knowingly introduced DEHP into the Product, or knowingly caused DEHP to be created in the Product; and/or Defendant has covered, obscured or altered a warning label that has been affixed to the Product pursuant to § 25600.2(b); and/or Defendant has received a notice and warning materials for the exposure pursuant to §

1 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or displaying  
2 the warning; and/or Defendant has actual knowledge of the potential consumer product exposure  
3 requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or  
4 distributor of the Product who: (i) is a “person in the course of doing business under § 25249.11(b)  
5 of the Act, and (ii) has designated an agent for service of process in California, or has a place of  
6 business in California.

7 27. At all times relevant to this action, Defendant has knowingly and intentionally  
8 exposed users of the Products to DEHP without first giving a clear and reasonable exposure  
9 warning to such individuals. More than five business days after receipt of the Notice of Violation,  
10 Defendant continued to distribute, sell, and/or offer to and sell in California without the requisite  
11 warning information.

12 28. On October 7, 2025, Plaintiff purchased the Product a second time from Defendant.  
13 At the time of the purchase, Defendant did not provide a clear and reasonable exposure warning  
14 pursuant to Cal. Code Regs. Tit. 27, § 25602.

15 29. As a proximate result of acts by 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 30. On June 4, 2025, Plaintiff purchased the Product from Home Depot. At the time of  
23 purchase, Home Depot did not provide a Proposition 65 exposure warning for DEHP or any other  
24 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described  
25 *supra*.

26 31. The Product was sent to a testing laboratory for phthalate testing to determine the  
27 phthalate content of the Product.  
28

32. The laboratory provided the results of its analysis. Results of this test determined the Product exposes users to DEHP (the “Chemical Test Report”).

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

34. On August 7, 2025, Plaintiff received from the analytical chemist an exposure assessment report which concluded that persons in California who use the Products will be exposed to levels of DEHP that require a Proposition 65 exposure warning.

35. On August 7, 2025, Plaintiff served the Notice on Defendant concerning the exposure of California citizens to DEHP from use of the Products without proper warning, subject to a private action to Defendant and to the California Attorney General’s office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

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

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



1 **FIRST CAUSE OF ACTION**

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

3 39. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 38 of  
4 this Complaint as though fully set forth herein.

5 40. Defendant has manufactured, processed, marketed, distributed, offered to sell  
6 and/or sold the Products in California since at least June 4, 2025.

7 41. On August 7, 2025, Plaintiff served the Notice on Defendant concerning the  
8 exposure of California citizens to DEHP from use of the Products without proper warning, subject  
9 to a private action to Defendant and to the California Attorney General's office and the offices of  
10 the County District attorneys and City Attorneys for each city with a population greater than  
11 750,000 persons wherein the herein violations allegedly occurred.

12 42. The Notice gives Defendant actual knowledge of the potential consumer product  
13 exposure requiring the warning pursuant to Cal. Code Regs, Tit. 27, § 25600.2. Use of the Products  
14 will expose users and consumers thereof to DEHP, a hazardous chemical found on the Proposition  
15 65 list of chemicals known to be hazardous to human health.

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

17 44. Plaintiff, based on his best information and belief, avers that at all relevant times  
18 herein, and at least since August 7, 2025, continuing until the present, that Defendant has continued  
19 to knowingly and intentionally expose California users and consumers of the Products to DEHP  
20 without providing required warnings under Proposition 65.

21 45. Defendant continues to sell the Product under a brand or trademark that is owned  
22 or licensed by Defendant or an affiliated entity; and/or Defendant has knowingly introduced DEHP  
23 into the Product, or knowingly caused DEHP to be created in the Product; and/or Defendant has  
24 covered, obscured or altered a warning label that has been affixed to the Product pursuant to §  
25 25600.2(b); and/or Defendant has received a notice and warning materials for the exposure  
26 pursuant to § 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or  
27 displaying the warning; and/or Defendant has actual knowledge of the potential consumer product  
28 exposure requiring the warning, and there is no manufacturer, producer, packager, importer,

1 supplier, or distributor of the Product who: (i) is a “person in the course of doing business under §  
2 25249.11(b) of the Act, and (ii) has designated an agent for service of process in California, or has  
3 a place of business in California

4 46. On October 7, 2025, more than five business days after Defendant received the  
5 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did  
6 not provide a Proposition 65 compliant exposure warning.

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

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

16 49. Defendant has knowledge that the normal and reasonably foreseeable use of the  
17 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur  
18 by their deliberate, non-accidental participation in the importation, distribution, sale and offering  
19 of the Products to consumers in California.

20 50. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
21 Complaint.

22 51. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
23 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

24 52. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
25 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.  
26  
27  
28

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 in accordance with Health and Safety Code §  
6 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: December 2, 2025

BRODSKY SMITH

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