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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 ONGUARD INDUSTRIES, LLC,
14 Defendant.

CASE NO.: **RG16807064**

JUDGE

DEPT.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

19 Plaintiff Anthony Ferreiro, by and through his attorneys, alleges the following cause of
20 action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

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

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical found in
4 over-boots sold and/or distributed by defendant Onguard Industries, LLC (“Onguard” or
5 “Defendant”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause cancer. On
7 January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause
8 cancer. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
9 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
10 reproductive toxicity.

11 4. Proposition 65 requires all businesses with ten (10) or more employees that
12 operate within California or sell products therein to comply with Proposition 65 regulations.
13 Included in such regulations is the requirement that businesses must label any product containing
14 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
15 intentionally” exposing any person to it.

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
17 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
18 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
19 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
20 Code § 25249.7.

21 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
22 and/or offers for sale, without the required warning, over-boots in California containing DEHP.
23 These products include, but are not limited to, *17” Yellow PVC Slicker Over Boot, UPC No. 7*
24 *9107911103 1, Item No. 60233749* (the “Product”).

25 7. Defendant’s failure to warn consumers, workers, and other individuals in
26 California of the health hazards associated with exposure to DEHP in conjunction with the sale,
27 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
28 Defendant to the enjoinder and civil penalties described herein.

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

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

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 16. On May 21, 2015, Plaintiff gave notice of alleged violation of Health and Safety
12 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
13 DEHP contained in the Product without proper warning, subject to a private action to Defendant
14 and to the California Attorney General's office and the offices of the County District attorneys
15 and City Attorneys for each city with a population greater than 750,000 persons wherein the
16 herein violations allegedly occurred.

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

22 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
23 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
24 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
25 are the subject of Plaintiff's notice of violation.

26 19. Plaintiff is commencing this action more than sixty (60) days from the date of his
27 notice to Defendant, as required by law.

28 **FIRST CAUSE OF ACTION**

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

2 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
3 this complaint as though fully set forth herein.

4 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
5 and/or retailer of the Product.

6 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65
7 list of a chemical known to be hazardous to human health.

8 23. The Product does not comply with the Proposition 65 warning requirements.

9 24. Plaintiff, based on his best information and belief, avers that at all relevant times
10 herein, and at least since April 6, 2015 continuing until the present, that Defendant has continued
11 to knowingly and intentionally expose California users and consumers of the Product to DEHP
12 without providing required warnings under Proposition 65.

13 25. The exposures that are the subject of the Notice result from the purchase,
14 acquisition, handling and recommended use of the product. Consequently, the primary route of
15 exposure to these chemicals is through dermal exposure of DEHP through direct contact with the
16 user's skin inside the boot and when the boots are put on or removed with bare hands. Should
17 the wearer perspire in the boots or water be introduced into the boots, skin permeation rates can
18 potentially increase as aqueous DEHP skin permeation rates are faster than neat DEHP
19 permeation. Socks and clothes worn within the boots are likely to absorb DEHP during use. The
20 contaminated articles of clothing will continue to be a source of dermal transfer even when the
21 boots are removed. If shoes containing soils or dirt are worn inside the Product come in contact
22 with the yellow PVC of the boot, DEHP can absorb onto the soils which potentially can be
23 resuspended in the air and ingested. Finally, while mouthing of the product does not seem likely,
24 some amount of exposure through ingestion can occur by handling the product with subsequent
25 touching of the users hand to mouth.

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

