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ENDORSED
FILED
ALAMEDA COUNTY

OCT 15 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xil Bowie

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
12 Plaintiff,
13 vs.
14 TRICAM INDUSTRIES, INC. and
15 WAL-MART STORES, INC.,
16 Defendants.

CASE NO.: RG 15789604

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

BY FAX

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18
19 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
20 alleges the following cause of action in the public interest of the citizens of the State of
21 California.

22 BACKGROUND OF THE CASE

23 1. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
25 at the Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), which reads, in relevant part,
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 giving clear and reasonable warning to such 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 6'
4 x 8' Weatherguard Extreme Duty Tarps, UPC No. 7 22571009526, sold and/or distributed by
5 defendants Tricam Industries, Inc. ("Tricam") and/or Wal-Mart Stores, Inc. ("Wal-Mart")
6 (Tricam and Wal-Mart are collectively referred to herein as, "Defendants") in California.

7 3. DEHP is a harmful chemical, known to the State of California to cause to cause
8 both cancer, and reproductive toxicity. On January 1, 1988, the State of California listed DEHP
9 as a chemical known to the State to cause cancer. On October 24, 2003, the State of California
10 listed DEHP as a chemical known to cause developmental male reproductive toxicity, and DEHP
11 has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
12 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

23 6. Plaintiff alleges that Defendants distribute, manufacture, produce, import, sell,
24 and/or offer for sale, without the required warning, 6' x 8' Weatherguard Extreme Duty Tarps in
25 California containing DEHP. These products include, but are not limited to, *Weatherguard*
26 *Extreme Duty Tarp 6' x 8', UPC # 7 22571009526, Item # TRP-6x8PVC-WG* (the "Product").

27 7. Defendants' failure to warn consumers, workers, and other individuals in
28 California of the health hazards associated with exposure to DEHP in conjunction with the sale,

1 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
2 Defendants to the enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of
4 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Product with the required warnings related to
7 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
8 Code § 25249.7(a).

9 **PARTIES**

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

14 11. Defendant Tricam, doing business in California at all relevant times herein, is
15 principally located in Minnesota, and engages in the design, manufacture, and marketing of
16 hardline consumer products. Through said business, Tricam effectively manufactures, imports,
17 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies
18 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale
19 or use in the State of California. Tricam can be served at c/o Charles A. McMunn, 7677
20 Equitable Drive, Eden Prairie, MN 55344. Tricam is a person in the course of doing business
21 within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

22 12. Defendant Wal-Mart, a Delaware Corporation, operates a chain of retail stores,
23 and through that business effectively manufactures, imports, distributes, sells, and/or offers the
24 Product for sale or use in California, or it implies by its conduct that it manufactures, imports,
25 distributes, sells, and/or offers the Product for sale or use in the State of California. Wal-Mart
26 maintains a registered agent for service of process at c/o CT Corporation System, 818 West
27 Seventh Street, 2nd Floor, Los Angeles, CA 90017. Wal-Mart is a person in the course of doing
28 business within the meaning of Health & Safety Code §§25249.6 and 25249.11.

1 24. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
2 and/or retailer of the Product.

3 25. The Product contains DEHP, a hazardous chemical found on the Proposition 65
4 list of a chemical known to be hazardous to human health.

5 26. The Product does not comply with the Proposition 65 warning requirements.

6 27. Plaintiff, based on his best information and belief, avers that at all relevant times
7 hereto, and at least since April 15, 2015 continuing until the present, that Defendants have
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DEHP without providing required warnings under Proposition 65.

10 28. The exposures that are the subject of this Complaint result from the purchase,
11 acquisition, handling and recommended use of the Product. Consequently, the primary route of
12 exposure to these chemicals is through dermal exposure through direct contact with the user's
13 skin when handling the Product with bare hands. Additionally, should the Product come into
14 contact with water, skin permeation rates can potential increase as aqueous DEHP skin
15 permeation rates are faster than neat DEHP permeation. Furthermore, exposure can result from
16 the handling of other materials that have been in contact with the Product. If soils or dust come
17 into contact with the Product, DEHP can absorb onto the soils which potentially can be
18 suspended in the air and inhaled or ingested. Finally, exposure can occur through ingestion from
19 the handling of the Product with the hands and subsequent touching of the hands to mouth.

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

23 30. Defendants have knowledge that the normal and reasonably foreseeable use of the
24 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
25 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
26 sale and offering of the Product to consumers in California

27 31. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
28 Complaint without success.

