

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

**ENDORSED
FILED
ALAMEDA COUNTY**

DEC 22 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xin Bowie

5 *Attorneys for Plaintiff*

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

10 GABRIEL ESPINOSA,
11 Plaintiff,
12 vs.
13 T. CHRISTY ENTERPRISES,
14 Defendant.

CASE NO.: RG15797507

JUDGE

DEPT.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

19 Plaintiff Gabriel Espinosa ("Plaintiff" or "Espinosa"), 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) and Diisononyl phthalate
4 (DINP), toxic chemicals found in Christy’s Professional Gloves manufactured, sold and/or
5 distributed by defendant T. Christy Enterprises (“T. Christy”) in California.

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

12 4. DINP is a harmful chemical known to the State of California to cause cancer. On
13 December 20, 2013, the State of California listed DINP as a chemical known to cause cancer and
14 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
15 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

26 7. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
27 and/or offers for sale, without the required warning, Christy’s Professional Gloves in California
28

1 containing DEHP and DINP. These products include, but are not limited to, *Christy's*
2 *Professional Gloves 4100 Red PVC Chips ON* (the "Product").

3 8. Defendant's failure to warn consumers, workers, and other individuals in
4 California of the health hazards associated with exposure to DEHP and DINP in conjunction
5 with the sale, manufacture, and/or distribution of the Product is a violation of Proposition 65 and
6 subjects Defendant to the enjoinder and civil penalties described herein.

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

9 10. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
10 Defendant to provide purchasers or users of the Product with the required warnings related to the
11 dangers and health hazards associated with exposure to DEHP and DINP pursuant to Health and
12 Safety Code § 25249.7(a).

13 **PARTIES**

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

18 12. Defendant T. Christy, a California corporation, was founded in 1976 and
19 manufactures and markets buildings and garden products as well as bathroom fittings. The
20 company also offers solvent chemicals, primers, cleaners, sealants, pipe repair kits, lubricants,
21 landscape fabric, drain socks, gravel bags, and fabric accessories. Through its business, T.
22 Christy effectively manufactures, imports, distributes, sells, and/or offers the Product for sale or
23 use in the State of California, or it implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the Product for sale or use in the State of California. T. Christy
25 can be served care of its registered agent for service of process at c/o Jonathan L. Christy, 655 E
26 Ball Rd, Anaheim, CA 92805.

27 13. Defendant T. Christy is a "person" in the course of doing business within the
28 meaning of Health & Safety Code §§ 25249.6 and 25249.11.

1 VENUE AND JURISDICTION

2 14. Venue is proper in the County of Alameda because one or more of the instances
3 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
4 conducted, and continues to conduct, business in the County of Alameda with respect to the
5 Product.

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

11 16. This Court has jurisdiction over Defendant because it has sufficient minimum
12 contacts with the State of California, and/or has otherwise purposefully availed itself of the
13 California market. Such purposeful availment has rendered the exercise of jurisdiction by
14 California courts consistent and permissible with traditional notions of fair play and substantial
15 justice.

16 SATISFACTION OF NOTICE REQUIREMENTS

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

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

28

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

4 29. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to DEHP and DINP, and Defendant intends that exposures to DEHP
6 and DINP will occur by their deliberate, non-accidental participation in the manufacture,
7 importation, distribution, sale and offering of the Product to consumers in California

8 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
9 Complaint.

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

12 32. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
13 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
16 following relief:

- 17 A. That the court assess civil penalties against Defendant in the amount of
18 \$2,500 per day for each violation in accordance with Health and Safety
19 Code § 25249.7(b);
- 20 B. That the court preliminarily and permanently enjoin Defendant mandating
21 Proposition 65 compliant warnings on the Product;
- 22 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 23 D. That the court grant any further relief as may be just and proper.

24
25 Dated: December 22, 2015

BRODSKY & SMITH, L.L.C.
By: 
Evan J. Smith (SBN242352)
Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff