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ENDORSED
FILED
ALAMEDA COUNTY
MAR 11 2016
CLERK OF THE SUPERIOR COURT
By Samuel Thomas Deputy

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

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 DYSON, INC.,
14 Defendant.

CASE NO.: **RG16807228**
JUDGE
DEPT.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

BY FAX

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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 Diisononyl phthalate (DINP) and Di-isodecyl phthalate (DIDP),
4 toxic chemicals found in vacuum hoses sold and/or distributed by defendant Dyson, Inc.
5 (“Dyson” or “Defendant”) in California.

6 3. On April 20, 2007, the State of California listed DIDP as a chemical known to the
7 state of cause reproductive toxicity. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code
8 §§ 25249.8 & 25249.10(b). On December 20, 2013, the State of California listed DINP as a
9 chemical known to cause cancer.

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
21 and/or offers for sale, without the required warning, vacuum hoses in California containing
22 DINP and DIDP. These products include, but are not limited to the *Tool Kit for Dyson Cordless*
23 *Vacuums, UPC No. 879957006003* (the “Product”).

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

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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 June 17, 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 DINP and DIDP contained in the Product without proper warning, subject to a private action to
14 Defendant and to the California Attorney General's office and the offices of the County District
15 attorneys and City Attorneys for each city with a population greater than 750,000 persons
16 wherein the 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 DINP and DIDP exposure, and that counsel believed there was meritorious and reasonable cause
21 for a 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 DINP and DIDP, a hazardous chemical found on the
7 Proposition 65 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 May 13, 2015 continuing until the present, that Defendant has
11 continued to knowingly and intentionally expose California users and consumers of the Product
12 to DINP and DIDP 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 skin exposure. Skin exposure to DINP and DIDP through
16 the user's hands is likely to occur when the user attaches and manipulates the flexible extension
17 hose. Exposure is also possible through leaching of DINP and DIDP into the air passed through
18 the flexible extension hose during vacuuming. The DINP and DIDP containing exhaust air is
19 discharged from the vacuum exhaust during use and the vapor phase DINP and DIDP can
20 potentially be ingested by the user or absorbed to the HEPA filter of the Dyson handheld vacuum
21 for which this tools attachment kit is intended for use. DINP and DIDP from the flexible
22 extension hose can absorb onto dust, soils, or debris passing through the hose which potentially
23 can be resuspended in the air and ingested during removal, emptying, and cleaning of the
24 handheld vacuum canister. Finally, while mouthing of the product does not seem likely, some
25 amount of exposure through ingestion can occur by handling the product with subsequent
26 touching of the users hand to mouth.

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