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ENDORSED
FILED
ALAMEDA COUNTY

MAR 22 2016

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

CASE NO.: RG10808622

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELEIF

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

BY FAX

18
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 lawn and garden spray hoses sold and/or distributed by defendant Chapin International, Inc.
5 (“Chapin” or “Defendant”) 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 cause cancer and it has come under the purview of Proposition 65 regulations since
9 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
10 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to
11 cause reproductive toxicity.

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

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

22 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
23 and/or offers for sale, without the required warning, hoses in California containing DEHP.
24 These products include, but are not limited to, *Lawn & Garden Sprayer, UPC # 0 23883 20000*
25 *8, Model # 20000* (the “Product”).

26 7. Defendant’s failure to warn consumers, and other individuals in California of the
27 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
28

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

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

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendant to provide purchasers or users of the Product with the required warnings related to the
7 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 is one of the largest manufacturers of industrial and retail sprayers in
15 North America. Through its business, Chapin effectively manufactures, imports, distributes,
16 sells, and/or offers the Product for sale or use in the State of California, or it implies by its
17 conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use
18 in the State of California. Chapin maintains a registered agent for service of process at c/o
19 Corporation Service Company at 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

20 12. Upon information and belief, Plaintiff avers that at all relevant times herein,
21 Defendant was a person doing business within the meaning of Health and Safety Code §
22 25249.11(b).

23 **VENUE AND JURISDICTION**

24 13. Venue is proper in the County of Alameda because one or more of the instances
25 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
26 conducted, and continues to conduct, business in the County of Alameda with respect to the
27 Product.

1 while mouthing of the product does not seem likely, some amount of exposure through ingestion
2 can occur by touching the product with subsequent touching of the users hand to mouth.

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

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

10 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
11 Complaint.

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

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

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
19 following relief:

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

28 Dated: March 22, 2016

BRODSKY & SMITH, LLC

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By: 

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