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ENDORSED
FILED
ALAMEDA COUNTY

MAR 23 2016

CLERK OF THE SUPERIOR COURT
By *Jaimie Namas* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 DAYTON ELECTRIC
14 MANUFACTURING CO., and W.W.
15 GRAINGER, INC.,
16 Defendants.

CASE NO.: **RG16808821**
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 air
4 hoses sold and/or distributed by defendants Dayton Electric Manufacturing Co. (“Dayton
5 Electric”) and W.W. Grainger, Inc. (“Grainger”) (collectively, “Defendants”) 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 Defendants produce, manufacture, distribute, import, sell,
23 and/or offer for sale, without the required warning, *Speedaire Snubber Hoses, 11 AF G9* in
24 California containing DEHP (the “Product”).

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

1 use in the State of California, or it implies by its conduct that it manufactures, imports,
2 distributes, sells, and/or offers the Product for sale or use in the State of California. Grainger
3 maintains a registered agent for service of process at c/o CT Corporation System, 208 S. LaSalle
4 Street, Suite 814, Chicago, IL 60604. Upon information and belief, Plaintiff avers that at all
5 relevant times herein, Defendant Grainger was a person doing business within the meaning of
6 Health and Safety Code § 25249.11(b).

7 **VENUE AND JURISDICTION**

8 13. Venue is proper in the County of Alameda because one or more of the instances
9 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
10 conducted, and continue to conduct, business in the County of Alameda with respect to the
11 Product.

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

17 15. This Court has jurisdiction over Defendants because they are either a citizen of
18 the State of California, have sufficient minimum contacts with the State of California, are
19 registered with the California Secretary of State as foreign corporations authorized to do business
20 in the State of California, and/or have otherwise purposefully availed themselves of the
21 California market. Such purposeful availment has rendered the exercise of jurisdiction by
22 California courts consistent and permissible with traditional notions of fair play and substantial
23 justice.

24 **SATISFACTION OF NOTICE REQUIREMENTS**

25 16. On August 10, 2015, Plaintiff gave notice of alleged violation of Health and
26 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California
27 citizens to DEHP contained in the Product without proper warning, subject to a private action to
28 Defendant and to the California Attorney General's office and the offices of the County District

1 attorneys and City Attorneys for each city with a population greater than 750,000 persons
2 wherein the herein violations allegedly occurred.

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

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

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

14 **FIRST CAUSE OF ACTION**

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

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

18 21. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
19 and/or retailer of the Product.

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

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

23 24. Plaintiff, based on his best information and belief, avers that at all relevant times
24 herein, and at least since June 25, 2015 continuing until the present, that Defendants have
25 continued to knowingly and intentionally expose California users and consumers of the Product
26 to DEHP without providing required warnings under Proposition 65.

27 25. The exposures that are the subject of this notice result from the purchase,
28 acquisition, handling and recommended use of the product. Consequently, the primary route of

1 exposure to these chemicals is through skin exposure. Skin exposure to DEHP through the
2 user's hands is likely to occur when the user manipulates the hose. If the hose is manipulated
3 while wet, DEHP skin permeation rates from aqueous solutions are faster than neat DEHP
4 permeation. The product can be expected to emit gas-phase DEHP into the surrounding air over
5 the lifetime of the product. Exposure is also possible through leaching of DEHP into the
6 compressed air within the hose. Vapor phase DEHP from the hose that has leached into the
7 compressed air line can be discharged when a pneumatic tool is actuated or when the air line
8 from the tool is disconnected (e.g. to change pneumatic tools). This discharged DEHP vapor can
9 be directly ingested by the user or can be absorbed to dust and subsequently ingested. Finally,
10 while mouthing of the product does not seem likely, some amount of exposure through ingestion
11 can occur by handling the product with subsequent touching of the users hand to mouth.

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

15 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
16 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
17 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
18 sale and offering of the Product to consumers in California

19 28. Despite Plaintiff's willingness to do so, Defendants have not engaged in good
20 faith efforts to resolve the herein claims prior to this Complaint.

21 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
22 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per
23 violation.

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

26 **PRAYER FOR RELIEF**
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WHEREFORE, Plaintiff demands judgment against Defendants and requests the following relief:

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

Dated: March 23, 2016

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