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

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 ETL, LLC,
14 Defendant.

CASE NO.: **RG16810766**

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 (“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
4 shower head hoses sold and/or distributed by defendant ETL, LLC (“ETL”) in California.

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

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

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

21 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
22 and/or offers for sale, without the required warning, shower heads in California containing
23 DEHP. These products include, but are not limited to, *Oxygenics® Shower Head (hoses)*, *UPC*
24 *No. 0 1014792668 2, Model No. 92668* (the “Product”).

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

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

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

8 **SATISFACTION OF NOTICE REQUIREMENTS**

9 17. On October 27, 2015, Plaintiff gave notice of alleged violation of Health and
10 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California
11 citizens to DEHP contained in the Product without proper warning, subject to a private action to
12 Defendant and to the California Attorney General's office and the offices of the County District
13 attorneys and City Attorneys for each city with a population greater than 750,000 persons
14 wherein the herein violations allegedly occurred.

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

20 19. After receiving the Notice, and to Plaintiff's best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
22 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
23 are the subject of Plaintiff's notice of violation.

24 20. Plaintiff is commencing this action more than sixty (60) days from the date of his
25 notice to Defendant, as required by law.

26 **FIRST CAUSE OF ACTION**

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

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

3 22. Defendant has, at all times mentioned herein, acted as a manufacturer, distributor,
4 and/or retailer of the Product.

5 23. The Product contains DEHP, hazardous chemicals found on the Proposition 65
6 list of a chemical known to be hazardous to human health.

7 24. The Product does not comply with the Proposition 65 warning requirements.

8 26. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since June 4, 2015, continuing until the present, that Defendant has continued
10 to knowingly and intentionally expose California users and consumers of the Product to DEHP
11 without providing required warnings under Proposition 65.

12 27. The exposures that are the subject of this notice result from the purchase,
13 acquisition, handling and recommended use of the product. Consequently, the primary route of
14 exposure to these chemicals is through dermal absorption of shower water containing DEHP that
15 has leached from the interior hose, and ingestion of discharged water containing DEHP. Dermal
16 exposure is possible through DEHP that has leached into the shower water passing through the
17 shower cord. This water containing DEHP is discharged from the shower head and can be
18 absorbed through the entire surface area of the user's body. Should water containing DEHP
19 come into contact with the user, aqueous DEHP skin permeation rates have been reported to be
20 faster than neat DEHP permeation. The concentration of DEHP leaching into the water from the
21 shower cord is dependent upon the flow rate of water through the cord and the temperature of the
22 shower water. Elevated water temperatures can be expected during showering that will lead to
23 increased kinetics of DEHP leaching from the shower cord into the shower water. If water is
24 held static inside the pressurized shower cord, levels of DEHP will continue to increase in the
25 water contained within the cord. Finally, while direct mouthing of the product does not seem
26 likely, indirect exposure can occur if discharged water containing DEHP is ingested through
27 activities such as hair and facial washing.

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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 Defendant intends that exposures to DEHP will occur
6 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
7 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: April 8, 2016

BRODSKY & SMITH, LLC

26 By: 
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