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EMBRASED
FILED
ALAMEDA COUNTY

FEB 09 2010

CLERK OF THE SUPERIOR COURT
By ~~D. OLIVER~~

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA

9
10 GABRIEL ESPINOSA,
11 Plaintiff,
12 vs.
13 CUSTOM LEATHERCRAFT
14 MANUFACTURING CO., INC. and
JOHNSTONE SUPPLY, INC.,
15 Defendants.

CASE NO.: *RK* 168 02528

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 Gabriel Espinosa ("Plaintiff"), by and through his attorneys, alleges the
20 following cause of action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

22 1. Plaintiff brings this representative action on behalf of all California citizens to
23 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
24 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,
25 "[n]o person in the course of doing business shall knowingly and intentionally expose any
26 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
27 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

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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 rain suits sold and distributed in California by defendants Custom Leathercraft Manufacturing
5 Co., Inc. (“Custom Leathercraft”) and Johnstone Supply, Inc. (“Johnstone”, collectively
6 “Defendants”).

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

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

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

23 6. Plaintiff alleges that Defendants produced, manufactured, distributed, imported,
24 sold, and offered for sale, without the required warning, rain suits in California containing
25 DEHP. These products include, but are not limited to, *Climate Gear Weather Resistant Work*
26 *Gear, UPC No. 084298010156* (the “Product”).

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

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

3 8. Plaintiff seeks civil penalties against Defendant for their 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 Defendants to provide purchasers or users of the Product with the required warnings related to
7 the 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 Custom Leathercraft, a California corporation, designs and
15 manufactures work gear. Through its business, Custom Leathercraft effectively manufactures,
16 imports, distributes, sells, and offers the Product for sale or use in the State of California, or it
17 implies by its conduct that it manufactures, imports, distributes, sells, and offers the Product for
18 sale or use in the State of California. Custom Leathercraft can be served care of Craig Scott
19 Anderson at 10240 S Alameda Street, South Gate, CA 90280.

20 12. Defendant Johnstone, an Oregon corporation, is the top cooperative wholesale
21 distributor in the country and a recognized national leader in the HVACR industry. Through its
22 business, Johnstone effectively imports, distributes, sells, and offers the Product for sale or use in
23 the State of California, or it implies by its conduct that it imports, distributes, sells, and offers the
24 Product for sale or use in the State of California. Johnstone can be served care of BH Service
25 Co., Inc. at 805 SW Broadway, Suite 1900, Portland, OR 97205.

26 13. Upon information and belief, Plaintiff avers that at all relevant times herein,
27 Defendants were each a person doing business within the meaning of Health and Safety Code §
28 25249.11(b).

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 because Defendants
4 conducted, and continue 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. This Court has jurisdiction over Defendants because
11 they are either a citizen of the State of California, have sufficient minimum contacts with the
12 State of California, are registered with the California Secretary of State as foreign corporations
13 authorized to do business in the State of California, and/or have otherwise purposefully availed
14 themselves of the California market. Such purposeful availment has rendered the exercise of
15 jurisdiction by California courts consistent and permissible with traditional notions of fair play
16 and substantial justice.

17 SATISFACTION OF NOTICE REQUIREMENTS

18 16. On November 9, 2015, Plaintiff gave notice of alleged violation of Health and
19 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California
20 citizens to DEHP contained in the Product without proper warning, subject to a private action to
21 Defendants and to the California Attorney General's office and the offices of the County District
22 attorneys and City Attorneys for each city with a population greater than 750,000 persons
23 wherein the herein violations allegedly occurred.

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

1 is removed. The rain suit can be expected to emit gas-phase DEHP into the air over the lifetime
2 of the product. This gas-phase DEHP can potentially be inhaled or become absorbed to dust that
3 can be resuspended and ingested. Finally, while mouthing of the product does not seem likely,
4 some amount of exposure through ingestion can occur by handling the product with subsequent
5 touching of the users hand to mouth.

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

9 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
10 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
11 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
12 and offering of the Product to consumers in California

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

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

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

20 **PRAYER FOR RELIEF**

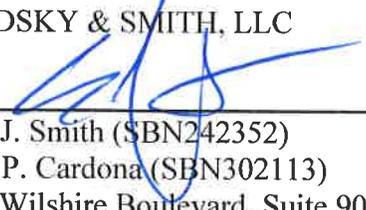
21 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
22 following relief:

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

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D. That the court grant any further relief as may be just and proper.

Dated: February 2, 2016

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