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 CLERK OF THE SUPERIOR COURT
 By *[Signature]*
 JANE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

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

Case No.: RG16802528
 Judge: Victoria S. Kolakowski
 Dept.: 23
**AMENDED COMPLAINT FOR CIVIL
 PENALTIES AND INJUNCTIVE RELIEF**
 (Violation of Health & Safety Code §25249.5
et seq.)

BY FAX

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

BACKGROUND OF THE CASE

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

27 2. This amended complaint is a representative action brought by Plaintiff in the
 28 public interest of the citizens of the State of California to enforce the People's right to be

1 informed of the health hazards caused by exposure to Di(2-ethylhexyl) phthalate (“DEHP”), a
2 toxic chemical found in rain suits sold and distributed in California by defendants Custom
3 Leathercraft Manufacturing, LLC (“Custom Leathercraft”) and Johnstone Supply, Inc.
4 (“Johnstone”, collectively “Defendants”).

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 reproductive toxicity.

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 Defendants produced, manufactured, distributed, imported,
22 sold, and offered for sale, without the required warning, rain suits in California containing
23 DEHP. These products include, but are not limited to, *Climate Gear Weather Resistant Work*
24 *Gear, UPC No. 084298010156* (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, and
27 distribution of the Product is a violation of Proposition 65 and subjects Defendants to the
28 enjoinder and civil penalties described herein.

1 8. Plaintiff seeks civil penalties against Defendants for their violations of
2 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
4 Defendants to provide purchasers or users of the Product with the required warnings related to
5 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
6 Code § 25249.7(a).

7 **PARTIES**

8 10. Plaintiff is a citizen of the State of California acting in the interest of the general
9 public to promote awareness of exposures to toxic chemicals in products sold in California and
10 to improve human health by reducing hazardous substances contained in such items. He brings
11 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

12 11. Defendant Custom Leathercraft, formerly known as Custom Leathercraft
13 Manufacturing Co., Inc., is a California corporation that designs and manufactures work gear.
14 Through its business, Custom Leathercraft effectively manufactures, imports, distributes, sells,
15 and offers the Product for sale or use in the State of California, or it implies by its conduct that it
16 manufactures, imports, distributes, sells, and offers the Product for sale or use in the State of
17 California. Custom Leathercraft can be served c/o Craig Scott Anderson at 10240 S Alameda
18 Street, South Gate, CA 90280.

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

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

28

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 each is either a citizen of the State of California, has sufficient minimum contacts with the State
12 of California, is registered with the California Secretary of State as foreign corporations
13 authorized to do business in the State of California, and/or has otherwise purposefully availed
14 itself 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 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
2 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
3 a cause of action against Defendants under Proposition 65 to enforce the alleged violations which
4 are the subject of Plaintiff's notice of violation.

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

7 **FIRST CAUSE OF ACTION**

8 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

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

11 21. Defendants have, at all times mentioned herein, acted as manufacturers,
12 distributors, and retailers of the Product.

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

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

16 24. Plaintiff, based on his best information and belief, avers that at all relevant times
17 herein, and at least since May 12, 2015, continuing until the present, that Defendants have
18 continued to knowingly and intentionally expose California users and consumers of the Product
19 to DEHP without providing required warnings under Proposition 65.

20 25. The exposures that are the subject of this notice result from the purchase,
21 acquisition, handling and recommended use of the product. Consequently, the primary route of
22 exposure to these chemicals is through dermal exposure. The inside lining of the rain suit is
23 likely to be in constant contact with either bare, exposed skin or the users clothing. If the rain
24 suit is worn over bare exposed skin, direct skin exposure is likely to occur. Should the wearer's
25 skin perspire inside the rain suit or the interior of the rain suit becomes wet from precipitation,
26 aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP
27 permeation. Clothing worn within the rain suit are likely to absorb DEHP during use. The
28 contaminated articles of clothing will continue to be a source of dermal transfer after the rain suit

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 Defendants 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: November 8, 2016

BRODSKY & SMITH, LLC

By: 

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