

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 10 2016

CLERK OF THE SUPERIOR COURT  
By JAMIE MORAS  
Deputy

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 ANTHONY FERREIRO,  
13 Plaintiff,  
14 vs.  
15 SAS SAFETY CORPORATION,  
16 Defendant.

CASE NO.: RG16815132

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

17  
18  
19 Plaintiff Anthony Ferreiro ("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.

28

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 sport security cables sold and/or distributed by defendant SAS Safety Corporation (“SAS Safety”  
5 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 the State to cause cancer and it has come under the purview of Proposition 65  
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
11 known to cause reproductive toxicity. *Id.*

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, light weight rain suits, *UPC No.*  
24 *781311068131* (the “Products”) in California containing DEHP.

25          7.       Defendant’s 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 Products is a violation of Proposition 65 and subjects Defendant to the  
28 enjoinder and civil penalties described herein.

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

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
4 Defendant to provide purchasers or users of the Products 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 SAS Safety offers head-to-toe safety products and solutions for  
13 respiratory, hearing, eyes, hands, body, face, first-aid kits, absorbents, spill containment, and  
14 other crucial safety accessories. Through its business, SAS Safety effectively manufactures,  
15 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or  
16 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
17 Products for sale or use in the State of California. SAS Safety maintains a registered agent for  
18 service of process at c/o Corporate Creations Network, Inc., 7320 6802 Paragon Place, Suite 410,  
19 Richmond, VA 23230.

20 12. SAS Safety is a “person” in the course of doing business within the meaning of  
21 Health & Safety Code sections 25249.6 and 25249.11.

### 22 VENUE AND JURISDICTION

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

27 14. This Court has jurisdiction over this action pursuant to California Constitution  
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
3 this Court has jurisdiction over this lawsuit.

4 15. This Court has jurisdiction over Defendant because it is either is a citizen of the  
5 State of California, has sufficient minimum contacts with the State of California, is registered  
6 with the California Secretary of State as foreign corporations authorized to do business in the  
7 State of California, and/or has otherwise purposefully availed itself of the California market.  
8 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
9 consistent and permissible with traditional notions of fair play and substantial justice.

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 16. On December 28, 2015, Plaintiff gave notice of alleged violation of Health and  
12 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California  
13 citizens to DEHP contained in the Products without proper warning, subject to a private action to  
14 Defendant and to the California Attorney General’s office and the offices of the County District  
15 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
16 wherein the herein violations allegedly occurred.

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

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

26 19. Plaintiff is commencing this action more than sixty (60) days from the date of his  
27 notice to Defendant, as required by law.  
28

1 **FIRST CAUSE OF ACTION**

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

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

5 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
6 and/or retailer of the Products.

7 22. The Products contains DEHP, a hazardous chemical found on the Proposition 65  
8 list of a chemical known to be hazardous to human health.

9 23. The Products does not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on his best information and belief, avers that at all relevant times  
11 herein, and at least since November 7, 2015 continuing until the present, that Defendant has  
12 continued to knowingly and intentionally expose California users and consumers of the Products  
13 to DEHP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of this notice result from the purchase,  
15 acquisition, handling and recommended use of the product. Consequently, the primary route of  
16 exposure to these chemicals is through direct skin exposure and/or dermal transfer. The rain suit  
17 is likely to be in constant contact with either bare, exposed skin or the users clothing. If the rain  
18 suit is worn over bare exposed skin, direct skin exposure is likely to occur. Should the wearer's  
19 skin perspire inside the rain suit or the interior of the rain suit become wet from precipitation,  
20 aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP  
21 permeation. Clothing worn within the rain suit are likely to absorb DEHP during use. The  
22 contaminated articles of clothing will continue to be a source of dermal transfer after the rain suit  
23 is removed. The rain suit can be expected to emit gas phase DEHP into the air over the lifetime  
24 of the product. This gas phase DEHP can potentially be inhaled or become absorbed to dust that  
25 can be resuspended and ingested. Finally, while mouthing of the product does not seem likely,  
26 some amount of exposure through ingestion can occur by handling the product with subsequent  
27 touching of the users hand to mouth.

1 26. 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 Products purchasers and  
3 users or until this known toxic chemical is removed from the Products.

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

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

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

12 30. 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 Products;
- 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: May 10, 2016

BRODSKY & SMITH, LLC

26 By:   
27 Evan J. Smith (SBN242352)  
28 Ryan P. Cardona (SBN302113)  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, CA 90212

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*