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

11 ANTHONY FERREIRO,
12 Plaintiff,
13 vs.
14 ACCESSORIES MARKETING, INC.,
15 Defendant.

Case No.: RG16821245

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

16 Plaintiff Anthony Ferreiro (“Plaintiff” or “Ferreiro”), by and through his attorneys,
17 alleges the following cause of action in the public interest of the citizens of the State of
18 California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in tire

BY FAX

1 inflators sold and/or distributed by defendant Accessories Marketing, Inc. (“AMI” or
2 “Defendant”) in California.

3 3. DINP is a harmful chemical known to the State of California to cause. On
4 December 20, 2013, the State of California listed DINP as a chemical known to the State to
5 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
6 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

17 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
18 and/or offers for sale, without the required warning, tire inflators in California containing DINP.
19 These products include, but are not limited to, *Top Off Tire Inflators, UPC No. 716281507021*
20 (the “Product”).

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

25 8. Plaintiff seeks civil penalties against Defendant for their violations of Proposition
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or users of the Product with the required warnings related to the

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety
2 Code § 25249.7(a).

3 **PARTIES**

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

8 11. Defendant AMI is a subsidiary of Illinois Tool Works - an American Fortune 500
9 company that produces engineered fasteners and components, equipment and consumable
10 systems, and specialty products. Through its business, AMI effectively manufactures, imports,
11 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies
12 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale
13 or use in the State of California. .

14 12. Defendant AMI maintains a registered agent for service of process at c/o 818
15 West Seventh Street, Suite 930, Los Angeles, CA 90017.

16 13. Defendant AMI is a “person” in the course of doing business within the meaning
17 of Health & Safety Code §§ 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

19 14. Venue is proper in the County of Alameda because one or more of the instances
20 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
21 conducted, and continues to conduct, business in the County of Alameda with respect to the
22 Product.

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

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

3 23. The Product contains DINP, hazardous chemicals found on the Proposition 65 list
4 of a chemical known to be hazardous to human health.

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

6 26. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since December 1, 2015, continuing until the present, that Defendant has
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DINP without providing required warnings under Proposition 65.

10 27. The exposures that are the subject of this notice result from the purchase,
11 acquisition, handling and recommended use of the product. Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
13 DINP by dermal absorption through direct skin contact with the cord during routine use when the
14 cord is manipulated with bare hands. The product can be expected to emit gas-phase DINP into
15 the air over the lifetime of the product. This gas-phase DINP can potentially be inhaled or can
16 be absorbed to dust that can be resuspended and potentially ingested. Finally, while mouthing of
17 the product does not seem likely, some amount of exposure through ingestion can occur by
18 touching the product with subsequent touching of the user's hand to mouth.

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

22 29. Defendant has knowledge that the normal and reasonably foreseeable use of the
23 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
24 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
25 sale and offering of the Product to consumers in California

26 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
27 Complaint.

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