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ENDORSED
FILED
ALAMEDA COUNTY

MAY 09 2016

CLERK OF THE SUPERIOR COURT
By Juanita Moya
Deputy

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

12 GABRIEL ESPINOSA,
13 Plaintiff,
14 vs.
15 K.N.M. INDUSTRIES, INC. d/b/a
16 LEXCO CABLE.,
17 Defendant.

CASE NO.: RG16814893

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

BY FAX

18
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.
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 Diisononyl phthalate (DINP), a toxic chemical found in sport
4 security cables sold and/or distributed by defendant K.N.M. Industries, Inc. d/b/a Lexco Cable
5 (“Lexco” or “Defendant”) in California.

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

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
21 and/or offers for sale, without the required warning, *Lexco Multi-Purpose Security Cables, UPC*
22 *No. 809029001779* (the “Products”) in California containing DINP.

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

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

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

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

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

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since December 3, 2015 continuing until the present, that Defendant has
8 continued to knowingly and intentionally expose California users and consumers of the Products
9 to DINP without providing required warnings under Proposition 65.

10 25. 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 cable during routine use when
14 the cable is manipulated with bare hands. The multi-purpose design of the cable likely permits
15 both indoor and outdoor use of the security cable. Should the cable be handled when it is wet or
16 handled with wet hands, aqueous HMWP skin permeation rates have been reported to be faster
17 than neat HMWP permeation [18]. The product can be expected to emit gas-phase DINP into
18 the air over the lifetime of the product. This gas-phase DINP can potentially be inhaled or can
19 be absorbed to dust that can be resuspended and potentially ingested. If the cable is stored or
20 transported in a carrier (e.g. purse, backpack, etc.) DINP that leaches from the cable may
21 contaminate other articles contained within the carrier bag that are subsequently handled by the
22 user. Finally, while mouthing of the product does not seem likely, some amount of exposure
23 through ingestion can occur by touching the product with subsequent touching of the user's hand
24 to mouth.

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

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