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ENDORSED
FILED
ALAMEDA COUNTY

JUL 13 2016

CLERK OF THE SUPERIOR COURT
Anita Dhi

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

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

Case No.: *RG16823042*

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

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

20 **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 complaint is a representative action brought by Plaintiff in the public interest
28 of the citizens of the State of California to enforce the People's right to be informed of the health

BY FAX

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
2 work gloves sold and/or distributed by defendant W Menard, Inc. t/a Rugged Wear (“Menard”)
3 in California.

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

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, work gloves under the *Rugged Wear*
22 trademark in California containing DEHP. These products include, but are not limited to, *UPC*
23 *No. 66012542* (the “Product”).

24 7. Defendant’s failure to warn consumers, workers, and other individuals in
25 California of the health hazards associated with exposure to DEHP in conjunction with the sale,
26 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
27 Defendant to the enjoinder and civil penalties described herein.
28

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 16. This Court has jurisdiction over Defendant because it has sufficient minimum
5 contacts with the State of California, and/or has otherwise purposefully availed itself of the
6 California market. Such purposeful availment has rendered the exercise of jurisdiction by
7 California courts consistent and permissible with traditional notions of fair play and substantial
8 justice.

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 17. On March 23, 2016, Plaintiff gave notice of alleged violation of Health and Safety
11 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
12 DEHP contained in the Product without proper warning, subject to a private action to Defendant
13 and to the California Attorney General's office and the offices of the County District attorneys
14 and City Attorneys for each city with a population greater than 750,000 persons wherein the
15 herein violations allegedly occurred.

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

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

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

27 **FIRST CAUSE OF ACTION**

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

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

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

5 23. The Product contains DEHP, a hazardous chemical found on the Proposition 65
6 list of a chemical known to be hazardous to human health.

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

8 25. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since January 21, 2016, continuing until the present, that Defendant has
10 continued to knowingly and intentionally expose California users and consumers of the Product
11 to DEHP without providing required warnings under Proposition 65.

12 26. The exposures that are the subject of this notice result from the purchase,
13 acquisition, handling and recommended use of the product. Consequently, the primary route of
14 exposure to these chemicals is through dermal exposure. The potential exists for dermal
15 exposure of DEHP gloves comes into contact with the user's exposed skin. Should the PVC
16 coating become wet, the user grasps the glove with wet hands, or the PVC coating contact
17 water/perspiration on the user's skin, skin permeation rates can potentially increase as aqueous
18 DEHP skin permeation rates are faster than neat DEHP permeation. The product can be
19 expected to emit gas phase DEHP into the air over the lifetime of the product. This gas phase
20 DEHP can potentially be inhaled or can be absorbed to dust that can be resuspended and
21 potentially ingested. If the gloves are stored or transported in a carrier bag, DEHP that leaches
22 from the PVC coating may contaminate other articles contained within the carrier bag that are
23 subsequently handled by the user. Finally, while mouthing of the product does not seem likely,
24 some amount of exposure through ingestion can occur by touching the user's hand to mouth
25 while wearing the gloves or by touching of the user's hand to mouth after the gloves are
26 removed.

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