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ENDORSED
FILED
ALAMEDA COUNTY

AUG 17 2016

CLERK OF THE SUPERIOR COURT
By Sue Peske Deputy

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

RG 10827638

11 GABRIEL ESPINOSA,
12 Plaintiff,
13 vs.
14 PROTECTIVE INDUSTRIAL
15 PRODUCTS, INC.,
16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

17 Plaintiff Gabriel Espinosa ("Plaintiff"), by and through his attorneys, alleges the
18 following cause of action in the public interest of the citizens of the State of 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") and Di(2-ethylhexyl) phthalate

- 1 -

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF
HEALTH & SAFETY CODE §25249.5

1 (DEHP), toxic chemicals found in Go-To-Work Kits sold and/or distributed by defendant
2 Protective Industrial Products, Inc. t/a G-Tek (“PIP” or “Defendant”) in California.

3 3. DINP and DEHP are harmful chemicals known to the State of California to cause
4 cancer and/or reproductive toxicity. On December 20, 2013, the State of California listed DINP
5 as a chemical known to cause cancer and it has come under the purview of Proposition 65
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
7 25249.8 & 25249.10(b). On January 1, 1988, the State of California listed DEHP as a chemical
8 known to the State to cause cancer. *Id.* On October 24, 2003, the State of California DEHP as a
9 chemical known to cause 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, G-Tek Go-To-Work Kits in California
22 containing DINP and DEHP. These Go-To-Work Kit products include G-Tek gloves, 34-
23 C232/L, and earplugs, 265-100C/NRR32 (the “Products”).

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

28

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

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

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On January 18, 2016, Plaintiff gave notice of alleged violation of Health and
11 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California
12 citizens to DINP and DEHP contained in the Products without proper warning, subject to a
13 private action to Defendant and to the California Attorney General's office and the offices of the
14 County District attorneys and City Attorneys for each city with a population greater than 750,000
15 persons wherein the herein violations allegedly occurred.

16 17. 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 DINP and DEHP exposure, and that counsel believed there was meritorious and reasonable cause
20 for a private action.

21 18. 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 19. 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 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
2 this complaint as though fully set forth herein.

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

5 22. The Products contain DEHP and DINP, hazardous chemicals found on the
6 Proposition 65 list of a chemical known to be hazardous to human health.

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

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

12 25. With respect to the G-Tek gloves, the exposures that are the subject of this notice
13 result from the purchase, acquisition, handling and recommended use of the product.
14 Consequently, the primary route of exposure to these chemicals in the G-Tek Gloves is through
15 dermal exposure. The potential exists for dermal exposure of DEHP through direct contact with
16 the user's skin when the gloves are worn or handled. Should the gloves be used in wet
17 conditions and water be in contact with the glove interior, skin permeation rates can potentially
18 increase for DEHP as aqueous skin permeation rates are faster than neat permeation. If items are
19 handled by the wearer with the gloves, DEHP can absorb onto these items leaving DEHP
20 residues. When these items are used, exposure to DEHP residues is possible. The product is
21 expected to leach gas phase DEHP over its lifetime that can be inhaled and will leach DEHP at
22 higher rates if the gloves are used in elevated temperatures or when handling hot objects.
23 Finally, while mouthing of the product does not seem likely, some amount of exposure through
24 ingestion can occur by touching the user's gloved hand to mouth or wearing the glove with
25 subsequent touching of the user's bare hand to mouth.

26 26. With respect to the earplugs, the primary route of exposure to these chemicals in
27 the earplug red cord is through dermal absorption. Users may potentially be exposed to DEHP
28 and DINP by dermal absorption through the hands when manipulating the red cord during

1 routine use or if the earplug cord is worn in contact against bare skin. Aqueous DEHP skin
2 permeation rates have been reported to be faster than neat DEHP permeation and this may be
3 relevant for other HMWP such as DINP. This can potentially increase the risk of exposure if the
4 red cord of the earplugs is wet or the cord is wet by water or perspiration. The product can be
5 expected to emit gas phase DEHP and DINP into the air over the lifetime of the product. This
6 gas phase DEHP and DINP can potentially be inhaled as the red cord is in the vicinity of the
7 user's facial area. Finally, while mouthing of the product does not seem likely, some amount of
8 exposure through ingestion can occur by touching the product with subsequent touching of the
9 users hand to mouth.

10 27. Plaintiff, based on his best information and belief, avers that such exposures will
11 continue every day until clear and reasonable warnings are provided to the Products' purchasers
12 and users or until these known toxic chemicals are removed from the Products.

13 28. Defendant has knowledge that the normal and reasonably foreseeable use of the
14 Products exposes individuals to DINP and DEHP, and Defendant intends that exposures to DINP
15 and DEHP will occur by its deliberate, non-accidental participation in the manufacture,
16 importation, distribution, sale and offering of the Products to consumers in California

17 29. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
18 Complaint.

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

21 31. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
22 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

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24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
26 following relief:
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- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: August 17, 2016

BRODSKY & SMITH, LLC

By:  _____

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