

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 1 8 2016

CLERK OF THE SUPERIOR COURT  
By Classie Collins Deputy

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

12 ANTHONY FERREIRO,  
13 Plaintiff,  
14 vs.  
15 KLEAR-VU CORPORATION,  
16 Defendant.

17 Case No: **R G 1 6 8 2 3 6 4 8**  
18 **COMPLAINT FOR CIVIL PENALTIES  
19 AND INJUNCTIVE RELIEF**  
20 **(Violation of Health & Safety Code §25249.5  
21 et seq.)**

22 BY FAX

23 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,  
24 alleges the following cause of action in the public interest of the citizens of the State of  
25 California.

26 **BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest  
of the citizens of the State of California to enforce the People's right to be informed of the health  
hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

1 seat cushions manufactured, sold and/or distributed by defendant Klear-Vu Corporation (“Klear-  
2 Vu” or “Defendant”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
4 reproductive toxicity. On January 1, 1988 the State of California listed DEHP as a chemical  
5 known to the State 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 October 24, 2003, the State of California listed DEHP as a chemical  
8 known to cause reproductive toxicity. *Id.*

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

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

19 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
20 and/or offers for sale, without the required warning, *The Gripper Chair Cushion, UPC No.*  
21 *028448635394* (the “Product”) in California containing DEHP.

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

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

28





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 DHEP, a hazardous chemical found on the Proposition 65  
4 list of a chemical known to be hazardous to human health.

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

6           25.     Plaintiff, based on his best information and belief, avers that at all relevant times  
7 herein, and at least since March 15, 2016, continuing until the present, that Defendant has  
8 continued to knowingly and intentionally expose California users and consumers of the Product  
9 to DEHP without providing required warnings under Proposition 65.

10          26.     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 exposure. Dermal exposure is possible when the  
13 user manipulates or touches the chair cushion with bare hands. Dermal exposure through the  
14 buttocks or legs is also possible if the user is seated on the chair cushion with exposed skin on  
15 these areas. This product can be expected to emit gas phase DEHP into the air over the lifetime  
16 of the product. This gas phase DEHP can potentially be inhaled or absorbed to household dust  
17 that can be resuspended and ingested. Clothing that comes into direct contact with the chair  
18 cushion are likely to absorb DEHP. The contaminated articles of clothing will continue to be a  
19 source of dermal transfer after user is no longer seated on the chair cushion. Finally, while  
20 mouthing of the product does not seem likely, some amount of exposure through ingestion can  
21 occur by touching the product with subsequent touching of the users hand to mouth.

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

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

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

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

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

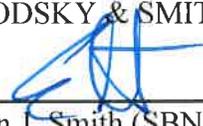
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
9 following relief:

- 10 A. That the court assess civil penalties against Defendant in the amount of  
11 \$2,500 per day for each violation in accordance with Health and Safety  
12 Code § 25249.7(b);
- 13 B. That the court preliminarily and permanently enjoin Defendant mandating  
14 Proposition 65 compliant warnings on the Product;
- 15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 16 D. That the court grant any further relief as may be just and proper.

17 Dated: July 18, 2016

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