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FILED
ALAMEDA COUNTY

NOV - 9 2016

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,

12 vs.

13 TWENTIETH CENTURY FOX FILM
14 CORPORATION, FX NETWORKS,
15 LLC, TWENTY-FIRST CENTURY
16 FOX, INC., and PISTON CLOTHING,
17 LLC,

18 Defendants.

Case No.: RG16833881

Dept. 16

Judge: Stephen Pulido

**AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

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

18 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the
19 following cause of action in the public interest of the citizens of the State of California.
20

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 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

- 1 -

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

BY FAX

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
2 children’s clothing sold and/or distributed by defendants Twentieth Century Fox Film
3 Corporation t/a Sons of Anarchy (“20th Century Fox”), FX Networks, LLC (“FX”), Twenty-
4 First Century Fox, Inc. (“21st Century Fox”), and Piston Clothing LLC (“Piston”) (collectively,
5 “Defendants”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
8 known to the State to cause cancer. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code
9 §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of California DEHP as a chemical
10 known to cause reproductive toxicity. *Id.*

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

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

21 6. Plaintiff alleges that Defendants distribute, import, sell, and/or offer for sale,
22 without the required Proposition 65 warning, Piston manufactured Sons of Anarchy Reaper Faux
23 Leather Kids Vests, SKU ID No. 6397 917600 0607 (the “Products”) in California containing
24 DEHP.

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

1 State of California, and/or has otherwise purposefully availed itself of the California market.
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 19. On June 1, 2016, Plaintiff gave notice of alleged violation of Health and Safety
6 Code § 25249.6 (the "Notice") to Defendants and Piston concerning the exposure of California
7 citizens to DEHP contained in the Products without proper warning, subject to a private action to
8 Defendants and to the California Attorney General's office and the offices of the County District
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons
10 wherein the herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

23 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

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

26 24. Defendants have, at all times mentioned herein, acted as a distributor, and/or
27 retailer of the Products.

28

1 25. The Products contain DEHP, s hazardous chemical found on the Proposition 65
2 list of a chemical known to be hazardous to human health.

3 26. The Products do not comply with the Proposition 65 warning requirements.

4 27. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since April 18, 2016 continuing until the present, that Defendants have
6 continued to knowingly and intentionally expose California users and consumers of the Products
7 to DEHP without providing required warnings under Proposition 65.

8 28. With respect to the Products, the exposures that are the subject of this notice
9 result from the purchase, acquisition, handling and recommended use of the Products.
10 Consequently, the primary route of exposure to these chemicals is through dermal exposure.
11 Dermal exposure through the child's hands can occur during fitting and removal of the vest and
12 when hands are placed into pockets. The inside of the vest is likely to be in constant contact with
13 either bare, exposed skin or the child's clothing. If the vest is worn over bare exposed skin,
14 direct skin exposure will occur. Should the wearer's skin perspire inside the vest or the interior
15 of the vest become wet from precipitation, aqueous DEHP skin permeation rates have been
16 reported to be faster than neat DEHP permeation. Although the association between HMWP
17 phthalates such as DEHP and atopic dermatitis has never been elucidated, as a multitude of
18 chemicals are present in plastics that come into contact with human skin, DEHP in headphones
19 and hearing protection aids has been reported to induce contact dermatitis. Clothing worn
20 beneath the vest are likely to absorb DEHP while the vest is worn. The contaminated articles of
21 clothing will continue to be a source of dermal transfer after the vest is removed. If the vest is
22 stored or transported in a carrier, DEHP that leaches from the vest may contaminate other articles
23 contained within the carrier bag that are subsequently handled by people.

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

27 30. Defendants have knowledge that the normal and reasonably foreseeable use of the
28 Products exposes individuals to DEHP, and Defendant intend that exposures to DEHP will occur

1 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
2 the Products to consumers in California

3 31. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
4 Complaint.

5 32. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
6 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per
7 violation.

8 33. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
9 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
12 following relief:

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

20
21 Dated: November 9, 2016

BRODSKY & SMITH, LLC

22 By: 

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