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ENDORSED
FILED
Superior Court of California
County of San Francisco

DEC 20 2016

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

18 ARTHUR ZIVKOVIC, an individual

19 Plaintiff,

20 v.

21 WELLS LAMONT LLC, a Delaware
22 corporation

23 Defendant.

Case No.:

CGC-16-556079

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

BY FAX

I.
INTRODUCTION

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2 1. This Complaint is a representative action brought by Plaintiff in the public interest of
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the
4 presence of Diisononyl phthalate (“DINP” or “Listed Chemical”) found in PVC Work Gloves, Winter
5 Lining, Blue manufactured, imported, sold, or distributed for sale in California by Defendant.

6 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
7 Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
8 business shall knowingly and intentionally expose any individual to a chemical known to the state to
9 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
10 individual. . . .” (Cal. Health & Safety Code § 25249.6.)

11 3. California identified and listed DINP as a chemical known to cause cancer as early as
12 December 20, 2013.

13 4. PVC Work Gloves, Winter Lining, Blue manufactured, imported, sold, or distributed in
14 California (“Products”) contain prohibited levels of Listed Chemical.

15 5. Defendant failed to sufficiently warn consumers and individuals in California about
16 potential exposure to Listed Chemical in connection with Defendant’s manufacture, import, sale, or
17 distribution of Products. This is a violation of Proposition 65.

18 6. Plaintiff seeks injunctive relief compelling Defendant to provide consumers and
19 individuals in California with sufficient warning pursuant to Proposition 65 and related Regulations.
20 (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for its
21 violations of Proposition 65. (Cal. Health & Safety Code § 25249.7(b).)

II.
PARTIES

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23 7. ARTHUR ZIVKOVIC (“Plaintiff”) is a citizen of the State of California dedicated to
24 protecting the health of California citizens through the elimination or reduction of toxic exposure from
25 consumer products. He brings this action in the public interest pursuant to Cal. Health & Safety Code
26 § 25249.7.

27 8. Defendant WELLS LAMONT LLC (“Wells” or “Defendant”) is a LLC organized and
28 existing under the laws of the State of Delaware. Wells does business in California, County of San

1 Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Wells manufactures, imports,
2 sells, or distributes Products in California and San Francisco County.

3 9. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.
4 Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis
5 alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein
6 alleged. When ascertained, their true names shall be reflected in an amended complaint.

7 10. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,
8 joint employers, or employees for each other. Defendants acted with the consent of the other Co-
9 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.
10 All conduct was ratified by Defendants, and each of them.

11 **III.**
VENUE AND JURISDICTION

12 11. California Constitution Article VI, Section 10 grants the Superior Court original
13 jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code
14 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
15 has jurisdiction.

16 12. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil
17 Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
18 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

19 13. Defendant has sufficient minimum contacts in the State of California or otherwise
20 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
21 consistent with traditional notions of fair play and substantial justice.

22 **FIRST CAUSE OF ACTION**
(Violation of Proposition 65 – Against all Defendants)

23 14. Plaintiff incorporates by reference each and every allegation contained above.

24 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that
25 cause cancer, birth defects, and other reproductive harm.

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1 16. Defendant manufactured, imported, sold, and/or distributed Products containing Listed
2 Chemical in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed
3 and believes such violations have continued after receipt of the Notice and will continue to occur into
4 the future.

5 17. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
6 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
7 to the Listed Chemical through reasonably foreseeable use of the Products.

8 18. The Products expose individuals to the Listed Chemical through dermal absorption,
9 ingestion, and inhalation.

10 19. Defendant knew or should have known that the Products contain Listed Chemical and
11 expose individuals to Listed Chemical in the ways provided above.

12 20. Defendant's actions in this regard were deliberate and not accidental.

13 21. On August 10, 2016, Plaintiff provided Defendant a 60-Day Notice of Violation
14 ("Notice") as required by and in compliance with Proposition 65. The Notice was provided to the
15 various required public enforcement agencies and contained a certificate of merit. The Notice alleged
16 that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the
17 health hazards associated with exposure to Listed Chemical contained in the Products.

18 22. The appropriate public enforcement agencies provided with the Notice failed to
19 commence and diligently prosecute a cause of action against Defendant.

20 23. Individuals exposed to the Listed Chemical contained in the Products through dermal
21 absorption, ingestion, and inhalation resulting from reasonably foreseeable use of the Products have
22 suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy
23 at law.

24 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
25 of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also
26 appropriate pursuant to Health & Safety Code Section 25249.7(a).

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 3 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 4 2. A preliminary and permanent injunction against Defendants from manufacturing,
- 5 importing, selling, and/or distributing Products in California without providing a clear
- 6 and reasonable warning as required by Proposition 65 and related Regulations;
- 7 3. Reasonable attorney's fees and costs of suit; and
- 8 4. Such other and further relief as may be just and proper.


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10 Dated: December 20, 2016

NICHOLAS & TOMASEVIC, LLP

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13 By: 
Craig Nicholas
Shaun Markley

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15 Attorneys for Plaintiff

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