

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED
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ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

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

11 GABRIEL ESPINOSA,
12 Plaintiff,
13 v.
14 PILOT AUTOMOTIVE, INC.,
15 Defendant.

Case No.: RB-16859767
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
(Violation of Health & Safety Code §25249.5
et seq.)

17 Plaintiff Gabriel Espinosa, by and through his attorneys, alleges the following cause of
18 action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in steering
4 wheel covers sold and/or distributed by defendant Pilot Automotive, Inc. (“Pilot” or
5 “Defendant”) in California.

6 3. DINP is a harmful chemical known to the State of California to cause cancer. On
7 December 20, 2013, the State of California listed DINP as a chemical known to the State to
8 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
9 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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[s] or threaten[s] to violate” the statute. Health &
19 Safety Code § 25249.7.

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
21 and/or offers for sale, without the required warning, West Coast Customs Windshield Visors,
22 UPC No. 7 57558 41608 0 (“Product” or “Products”) in California containing DINP.

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

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 with the California Secretary of State as foreign corporations authorized to do business in the
2 State of California, and/or has otherwise purposefully availed itself of the California market.
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

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

21 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
22 Notice to Pilot, as required by law.

23 **FIRST CAUSE OF ACTION**

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

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

27 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
28 and/or retailer of the Product.

1 22. The Product contains DINP, a hazardous chemical found on the Proposition 65
2 list of chemicals known to be hazardous to human health.

3 23. The Product does not comply with the Proposition 65 warning requirements.

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since June 28, 2016 continuing until the present, that Pilot has continued to
6 knowingly and intentionally expose California users and consumers of the Product to DINP
7 without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of this notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is through dermal exposure. Dermal exposure to DINP can occur
11 when installing the sport windshield visor with bare hands. Should the product come into
12 contact with water, as may be expected during rain or snowfall, washing the automobile, or the
13 wearer contact the windshield visor with wet, bare hands, aqueous HMWP skin permeation rates
14 have been reported to be faster than neat HMWP permeation. Finally, while mouthing of the
15 product does not seem likely, some amount of exposure through ingestion can occur by touching
16 the product with subsequent touching of the user's hand to mouth.

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

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

24 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
25 Complaint.

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

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