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ENDORSED
FILED
ALAMEDA COUNTY

JAN - 9 2017

8 *Attorneys for Plaintiff*

CLERK OF THE SUPERIOR COURT
By Lanette J. [Signature]
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 KENTAK PRODUCTS COMPANY,
14 Defendant.

Case No.: RA17-844181
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

BY FAX

16 Plaintiff Anthony Ferreiro, by and through his attorneys, alleges the following cause of
17 action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

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

1 (“DINP”), toxic chemicals found in air hoses, sold, and/or distributed by defendant Kentak
2 Products Company (“Kentak” or “Defendant”) in California.

3 3. DIDP is a harmful chemical known to the State of California to cause
4 reproductive toxicity. DIDP has been listed on the Proposition 65 list of chemicals known to
5 reproductive toxicity since August 20, 2007 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).

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

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

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

22 7. Plaintiff alleges that Defendant distributes, manufactures, produces, imports, sells,
23 and/or offers for sale, without the required warning, air hoses in California containing DIDP and
24 DINP. These products include, but are not limited to, *3/8” 1Dx25’ PVC Air Hose Assembly,*
25 *Color: red, UPC# 5002503710JP, Kentak Part# 82729344, JUP-R0380-25-CF, Size: 275 X 565*
26 *X 25* (the “Product”).

27 8. Defendant’s failure to warn consumers, workers, and other individuals in
28 California of the health hazards associated with exposure to DIDP and DINP in conjunction with

1 the sale, manufacture, and/or distribution of the Product is a violation of Proposition 65 and
2 subjects Defendant to the enjoinder and civil penalties described herein.

3 9. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 10. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendant to provide purchasers or users of the Product with the required warnings related to the
7 dangers and health hazards associated with exposure to DIDP and DINP pursuant to Health and
8 Safety Code § 25249.7(a).

9 **PARTIES**

10 11. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. He brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 12. Defendant Kentak Industrial Supply Co., a New York Corporation, is one of the
15 largest industrial equipment distributors in the world, and through that business effectively
16 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in California, or
17 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product
18 for sale or use in the State of California. Kentak Industrial Supply Co. can be served at 75
19 Maxess Road, Melville, NY 11747-3151. Kentak Industrial Supply Co. is a person in the course
20 of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

21 13. Defendant Kentak manufactures extruded plastic tubing and hose products in a
22 variety of sizes and materials, and through that business, effectively manufactures, imports,
23 distributes, sells, and/or offers the Product for sale or use in California, or it implies by its
24 conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use
25 in the State of California.

26 14. Defendant Kentak maintains a registered agent for service of process at c/o
27 Douglas A. Gomoll, 46037 Lori Lane, E Liverpool, OH 43920.

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1 15. Upon information and belief, Plaintiff avers that at all relevant times herein,
2 Defendant was a person doing business within the meaning of Health and Safety Code §
3 25249.11(b).

4 **VENUE AND JURISDICTION**

5 16. Venue is proper in the County of Alameda, because one or more of the instances
6 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
7 conducted, and continues to conduct, business in the County of Alameda with respect to the
8 Product.

9 17. This Court has jurisdiction over this action pursuant to California Constitution
10 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
11 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
12 enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore,
13 this Court has jurisdiction over this lawsuit.

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

20 **SATISFACTION OF NOTICE REQUIREMENTS**

21 19. On August 17, 2016, Plaintiff gave notice to Defendant of alleged violations of
22 Health and Safety Code § 25249.6 (the “Notice”), concerning the exposure of California citizens
23 to DIDP and DINP without proper warning from their handling, acquisition and use of the
24 Product, subject to a private action to the Defendant and to the California Attorney General’s
25 office and the offices of the County District attorneys and City Attorneys for each city with a
26 population greater than 750,000 persons wherein the herein violations allegedly occurred.

27 20. The Notice complied with all procedural requirements of Proposition 65 including
28 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at

1 least one person with relevant and appropriate expertise who reviewed relevant data regarding
2 DIDP and DINP exposure, and that counsel believed there was meritorious and reasonable cause
3 for a private action.

4 21. After receiving the Notices, and to Plaintiff's best information and belief, none of
5 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
6 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
7 are the subject of Plaintiff's notice of violation.

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

10 **FIRST CAUSE OF ACTION**

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

12 23. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 22 of
13 this complaint as though fully set forth herein.

14 24. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
15 and/or retailer of the Product.

16 25. The Product contains DIDP and DINP, hazardous chemicals found on the
17 Proposition 65 list of a chemical known to be hazardous to human health.

18 26. The Product does not comply with the Proposition 65 warning requirements.

19 27. Plaintiff, based on his best information and belief, avers that at all relevant times
20 hereto, and at least since April 6, 2015 continuing until the present, that Defendant has continued
21 to knowingly and intentionally expose California users and consumers of the Product to DIDP
22 and DINP without providing required warnings under Proposition 65.

23 28. The exposures that are the subject of this notice result from the purchase,
24 acquisition, handling and recommended use of the product. Consequently, the primary route of
25 exposure to these chemicals is through skin exposure to DINP and DIDP through the user's
26 hands is likely to occur when the user manipulates the hose. Exposure is also possible through
27 leaching of DINP and DIDP into the compressed air within the hose. Vapor phase DINP and
28 DIDP from the hose that has leached into the compressed air line can be discharged when a

1 pneumatic tool is actuated or when the air line from the tool is disconnected. This discharged
2 DINP and DIDP vapor can be ingested by the user. If the Jupiter Pneumatics Air Hose is used in
3 a construction setting, fine construction dust e.g. sheetrock, sawdust can absorb vapor phase
4 DINP and DIDP that is discharged from the hose and this dust can potentially be resuspended in
5 the air and ingested. Finally, while mouthing of the product does not seem likely, some amount
6 of exposure through ingestion can occur by handling the product with subsequent touching of the
7 users hand to mouth.

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

11 30. Defendant has knowledge that the normal and reasonably foreseeable use of the
12 Product exposes individuals to DIDP and DINP, and Defendant intends that exposures to DIDP
13 and DINP will occur by their deliberate, non-accidental participation in the manufacture,
14 importation, distribution, sale and offering of the Product to consumers in California

15 31. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
16 Complaint without success.

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

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

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PRAYER FOR RELIEF

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23 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
24 following relief:

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- 26 A. That the court assess civil penalties against Defendant in the amount of
27 \$2,500 per day for each violation in accordance with Health and Safety
28 Code § 25249.7(b);


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- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- 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: January 9, 2017

BRODSKY & SMITH, LLC

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