

ENDORSED
FILED
ALAMEDA COUNTY

JAN 19 2017

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

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*

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

13 GABRIEL ESPINOSA,

14 Plaintiff,

15 v.

16 ALLIED LIQUIDATING
17 INCORPORATED f/k/a ALLIED
18 PLASTICS, INC.,

19 Defendant.

Case No.: *RG*

17846 107

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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

22 **BACKGROUND OF THE CASE**

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

BY FA

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 Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
4 Squeezy Siphon Pumps sold and/or distributed by defendant Allied Liquidating Incorporated
5 (“Allied Plastics” or “Defendant”) 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 and it has come under the purview of Proposition 65
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed Di(2-ethylhexyl)
11 phthalate (DEHP) as a chemical known to cause reproductive toxicity.

12 4. 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 product containing
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
16 intentionally” exposing any person to it.

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

22 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
23 and/or offers for sale, without the required warning, siphon pumps, including but not limited to
24 UPC No. 0 77225 01000 8 (“Product” or “Products”) in California that contain DEHP.

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

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

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

9 SATISFACTION OF NOTICE REQUIREMENTS

10 16. On August 29, 2016, Plaintiff gave notice of alleged violation of Health and
11 Safety Code § 25249.6 (the "Notice") to Allied Plastics concerning the exposure of California
12 citizens to DEHP contained in the Product without proper warning, subject to a private action to
13 Allied Plastics and to the California Attorney General's office and the offices of the County
14 District attorneys and City Attorneys for each city with a population greater than 750,000
15 persons wherein the herein violations allegedly occurred.

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

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

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
26 Notice to Allied Plastics, as required by law.

27
28

1 FIRST CAUSE OF ACTION

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

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

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

7 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65
8 list of chemicals known to be hazardous to human health.

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

10 24. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since August 2, 2016 continuing until the present, that Allied Plastics has
12 continued to knowingly and intentionally expose California users and consumers of the Product
13 to DEHP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals is through dermal absorption. Potential exposure routes to DEHP
17 are dermal absorption through direct contact with the plastic hose during use and dermal
18 absorption of liquid that has come into contact with the plastic hose. Should the siphon pump be
19 used for pumping water, DEHP from the hose can be expected to leach into the water passing
20 through the hose and if the user's bare skin comes into contact with the DEHP contaminated
21 water, skin permeation rates can potentially increase as aqueous DEHP skin permeation rates are
22 faster than neat DEHP permeation. The label indicates that the siphon pump is suitable for
23 pumping gasoline. A typical gasoline consists of hydrocarbons with between 4 and 12 carbon
24 atoms per molecule. It is a mixture of alkanes, cycloalkanes and alkenes. Due to the non-polar,
25 hydrocarbon nature of gasoline and the lipophilic of DEHP, a high solubility of DEHP in
26 gasoline is expected. Nonpolar solvents, such as gasoline, can diffuse into the PVC hose
27 increasing the free volume, thus raising the diffusion rate of the phthalate out of the PVC. DEHP
28 can leach from the hose into the gasoline passing though the hose and be absorbed through the

1 user's skin should the siphoned gasoline come into contact with the user's bare skin. The
2 product can be expected to emit gas phase DEHP into the air over the lifetime of the product. If
3 the siphon pump is stored or transported in a carrier or tool chest, DEHP that leaches form the
4 hose may contaminate other articles contained within the carrier or tool chest that are
5 subsequently handled by the user. Finally, while direct mouthing of the product does not seem
6 likely, some amount of exposure through ingestion can occur by handling the plastic hose with
7 subsequent touching of the users hand to mouth.

8 26. 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 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
12 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
13 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
14 sale and offering of the Product to consumers in California

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

17 29. 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 30. 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.

21 **PRAYER FOR RELIEF**

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

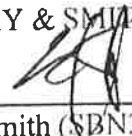
- 24 A. That the court assess civil penalties against Defendant in the amount of
25 \$2,500 per day for each violation in accordance with Health and Safety
26 Code § 25249.7(b);
- 27 B. That the court preliminarily and permanently enjoin Defendant mandating
28 Proposition 65 compliant warnings on the Product;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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 18, 2017

BRODSKY & SMITH, L.L.C

By: 

Evan J. Smith (SBN242352)
Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff