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ENDORSED
FILED
ALAMEDA COUNTY

JAN 19 2017
CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 AARCO PRODUCTS, INC.,

15 Defendant.

Case No.:

RG **17846108**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELEIF**

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

17 Plaintiff Anthony Ferreiro, 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 Anthony Ferreiro ("Plaintiff" or "Ferreiro"), 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.

BY FAX

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 Aarco
4 Products bulletin boards sold and/or distributed by defendant Aarco Products, Inc. (“Aarco” or
5 “Defendant”) in California.

6 3. DINP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On December 20, 2013, the State of California listed DINP 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).

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

21 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
22 and/or offers for sale, without the required warning, Aarco Products Burlap Weave Vinyl
23 Bulletin Boards (“Product” or “Products”) in California containing DINP.

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

28

1 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

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

7 **PARTIES**

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

12 11. Defendant Aarco offers Bulletin Boards, Chalkboards, Blackboards, Changeable
13 Letter Signs, Makerboards, etc. Through its business, Aarco effectively manufactures, imports,
14 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies
15 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale
16 or use in the State of California. Aarco is principally located at 21 Old Dock Road, Yaphank,
17 NY 11980.

18 12. Defendant Aarco is a “person” in the course of doing business within the meaning
19 of Health & Safety Code sections 25249.6 and 25249.11.

20 **VENUE AND JURISDICTION**

21 13. Venue is proper in the County of Alameda because one or more of the instances
22 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
23 conducted, and continues to conduct, business in the County of Alameda with respect to the
24 Product.

25 14. This Court has jurisdiction over this action pursuant to California Constitution
26 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
27 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
28

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 September 6, 2016, Plaintiff gave notice of alleged violation of Health and
11 Safety Code § 25249.6 (the "Notice") to Aarco concerning the exposure of California citizens to
12 DINP contained in the Product without proper warning, subject to a private action to Aarco and
13 to the California Attorney General's office and the offices of the County District attorneys and
14 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
15 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 DINP 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 Aarco under Proposition 65 to enforce the alleged violations which are
24 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 Aarco, as required by law.

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 DINP, 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 June 14, 2016 continuing until the present, that Aarco has continued to
12 knowingly and intentionally expose California users and consumers of the Product to DINP
13 without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of this 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 exposure. Dermal exposure through the user's
17 bare hands is expected when the bulletin board surface is contacted during installation or
18 subsequent manipulation of items affixed to the bulletin board surface. DINP that leaches from
19 the bulletin board surface may contaminate the surface of articles affixed to the bulletin board
20 that are subsequently handled by people. The product can be expected to emit gas phase DINP
21 into the air over the lifetime of the product. This gas phase DINP can potentially be inhaled or
22 can be absorbed to dust that can be resuspended and potentially ingested. Finally, while
23 mouthing of the product does not seem likely, some amount of exposure through ingestion can
24 occur by handling the product with subsequent touching of the user's hand to mouth.

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

28

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

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

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

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

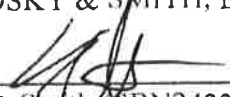
PRAYER FOR RELIEF

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

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

21
22 Dated: January 18, 2017

BRODSKY & SMITH, LLC

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