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ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 14 2017

SUE PESKO

By \_\_\_\_\_

5 *Attorneys for Plaintiff*

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

10  
11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 v.  
14 GREAT STAR INDUSTRIAL USA, LLC,  
15 Defendant.

Case No.: **RG17849307-**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

16  
17 Plaintiff Anthony Ferreiro (“Plaintiff” or “Ferreiro”), by and through his attorneys,  
18 alleges the following cause of action in the public interest of the citizens of the State of  
19 California.

20 **BACKGROUND OF THE CASE**

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

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 Pace Setter Grout Bags sold and/or distributed by defendant Great Star Industrial USA, LLC  
5 (“Great Star” 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 DEHP as a chemical  
11 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, Pace Setter Grout Bags, UPC No.  
24 084389027445 (“Product” or “Products”) in California containing 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 September 20, 2016, Plaintiff gave notice of alleged violation of Health and  
11 Safety Code § 25249.6 (the "Notice") to Great Star concerning the exposure of California  
12 citizens to DEHP contained in the Product without proper warning, subject to a private action to  
13 Great Star and to the California Attorney General's office and the offices of the County District  
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
15 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 Great Star under Proposition 65 to enforce the alleged violations which  
24 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 Great Star, as required by law.

27 **FIRST CAUSE OF ACTION**

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

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

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

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

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

8           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
9 herein, and at least since November 7, 2015, continuing until the present, that Great Star has  
10 continued to knowingly and intentionally expose California users and consumers of the Product  
11 to DEHP without providing required warnings under Proposition 65.

12           25.     The exposures that are the subject of the Notice result from the purchase,  
13 acquisition, handling and recommended use of the product. Consequently, the primary route of  
14 exposure to these chemicals is through dermal exposure. During normal expected use, a wet  
15 grout slurry is in contact with the inner vinyl lining and DEHP is likely to occur. Direct dermal  
16 contact between the inner lining with the user's hands can occur during cleaning the grout bag  
17 interior. Direct dermal contact between the plastic tip and the user's hands can occur when  
18 holding the plastic tip of the grout bag to apply a grout line. Both dermal contact scenarios can  
19 involve direct hand contact with the DEHP contaminated portion of the grout bag as well as  
20 water mediated exposure where DEHP can migrate into an aqueous phase and the aqueous  
21 solution can permeate through the user's skin. Aqueous DEHP skin permeation rates have been  
22 reported to be faster than neat DEHP permeation. Finally, while mouthing of the product does  
23 not seem likely, some amount of exposure through ingestion can occur by handling the product  
24 or its contents 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 DEHP, and Defendant intends that exposures to DEHP 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.

11 **PRAYER FOR RELIEF**

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: February 14, 2017

BRODSKY & SMITH, LLC

23 By:  \_\_\_\_\_

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