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ENDORSED
FILED
ALAMEDA COUNTY
MAR 16 2017

8 *Attorneys for Plaintiff*

CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 THE LJE COMPANY,

15 Defendant.

16 Case No.:

17 **COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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

20 **BACKGROUND OF THE CASE**

21 1. Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), brings this representative
22 action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water
23 and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 et seq
24 ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business
25 shall knowingly and intentionally expose any individual to a chemical known to the state to
26 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
27 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 Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
4 Garage Fit PVC Jump Ropes manufactured, sold and/or distributed by defendant The LJE
5 Company ("LJE" 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, Garage Fit Jump PVC Ropes ("Product" or
24 "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.

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

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

PARTIES

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

11. Defendant LJE, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California. LJE maintains a registered agent for service of process at c/o Melissa Romero, 35934 Wolverine Lane, Murrieta, CA 92563.

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

VENUE AND JURISDICTION

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

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

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

7 **SATISFACTION OF NOTICE REQUIREMENTS**

8 16. On November 22, 2016, Plaintiff gave notice of alleged violation of Health and
9 Safety Code § 25249.6 (the "Notice") to LJE concerning the exposure of California citizens to
10 DEHP contained in the Product without proper warning, subject to a private action to LJE and to
11 the California Attorney General's office and the offices of the County District attorneys and City
12 Attorneys for each city with a population greater than 750,000 persons wherein the herein
13 violations allegedly occurred.

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

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

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

25 **FIRST CAUSE OF ACTION**

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

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

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

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

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

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since October 20, 2016 continuing until the present, that LJE has continued to
8 knowingly and intentionally expose California users and consumers of the Product to DEHP
9 without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of this notice result from the purchase,
11 acquisition, handling and recommended use of the product. Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Users may be exposed to DEHP by
13 dermal absorption through direct skin contact with the orange rope during normal expected use
14 when the orange PVC rope is grasped or manipulated with bare hands. Should the user's hands
15 perspire during exercising with the jump rope and handle the orange PVC rope, skin permeation
16 rates can potentially increase as aqueous DEHP skin permeation rates are faster than neat DEHP
17 permeation. The product can be expected to emit gas phase DEHP into the air over the lifetime
18 of the product. If the jump rope is placed in a carrier or stored in a drawer, DEHP that leaches
19 from the jump rope may contaminate other articles contained within the carrier or drawer that are
20 subsequently handled, worn, or consumed by the user. Finally, while mouthing of the jump rope
21 does not seem likely, some amount of exposure through ingestion can occur by touching the
22 product with subsequent touching of the user's hand to mouth.

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

26 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
27 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
28

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
2 sale and offering of the Product to consumers in California

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

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

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

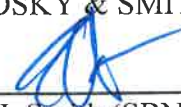
9 **PRAYER FOR RELIEF**

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

- 12 A. That the court assess civil penalties against Defendant in the amount of
13 \$2,500 per day for each violation in accordance with Health and Safety
14 Code § 25249.7(b);
- 15 B. That the court preliminarily and permanently enjoin Defendant mandating
16 Proposition 65 compliant warnings on the Product;
- 17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 18 D. That the court grant any further relief as may be just and proper.

19
20 Dated: March 16, 2017

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