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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 15 2017

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

WEALERS, INC.,

Defendant.

Case No.:

**RG 17860 354**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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

**BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
2 raincoats/ponchos manufactured, sold and/or distributed in California by defendant Wealers, Inc.  
3 (“Wealers” or “Defendant”) in California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
5 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
6 known to the State to cause cancer and DEHP has come under the purview of Proposition 65  
7 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
8 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
9 known to cause reproductive toxicity. *Id.*

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
21 and/or offers for sale in California, without the required warning, Wealers Raincoats and  
22 Ponchos (“Product” or “Products”), that contain DEHP.

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

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
28 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 and DINP 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 Wealers is a wholesaler and manufacturer of outdoor and camping gear and accessories. Through its business, Wealers effectively manufactures, imports, distributes, sells, and/or offers the Products 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.

12. Defendant Wealers 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.

15. This Court has jurisdiction over Defendant because it is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered

1 with the California Secretary of State as foreign corporations authorized to do business in the  
2 State of California, and/or has otherwise purposefully availed itself of the California market.  
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On January 16, 2017, Plaintiff gave notice of alleged violation of Health and  
7 Safety Code § 25249.6 (the "Notice") to Wealers concerning the exposure of California citizens  
8 to DEHP contained in the Product without proper warning, subject to a private action to Wealers  
9 and to the California Attorney General's office and the offices of the County District attorneys  
10 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
11 herein violations allegedly occurred.

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

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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

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

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

4           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
5 herein, and at least since November 18, 2016, continuing until the present, that Wealers has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DEHP without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of the Notice result from the purchase,  
9 acquisition, handling and recommended use of the product. Consequently, the primary route of  
10 exposure to these chemicals is through dermal absorption through dermal exposure. The raincoat  
11 is likely to be in constant contact with either bar, exposed skin or the users clothing. If the  
12 raincoat is worn over bare exposed skin, dermal exposure is likely to occur. The hood of the  
13 raincoat can come into contact with the user's face, ears, neck, and scalp where dermal exposure  
14 can occur. Dermal exposure through the user's hands can occur when the user's hands are  
15 placed in the pockets. Should the wearer's skin perspire inside the raincoat or the interior of the  
16 raincoat become wet from precipitation, aqueous DEHP skin permeation rates have been  
17 reported to be faster than neat DEHP permeation. Clothing worn within the raincoat and items  
18 placed within the pockets are likely to absorb DEHP while the raincoat is worn. The  
19 contaminated articles of clothing worn beneath the raincoat will continue to be a source of  
20 dermal transfer after the raincoat is removed. If the raincoat is stored or transported in a carrier  
21 DEHP that leaches from the raincoat may contaminate other articles contained within these  
22 closed spaces that are subsequently handled, worn, or ingested by the user. 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 or  
25 consuming items without a protective skin packaging that are placed within the pockets of the  
26 raincoat.

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

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

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

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

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

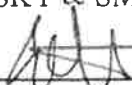
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15                                   **PRAYER FOR RELIEF**

16           WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
17 following relief:

- 18                   A.     That the court assess civil penalties against Defendant in the amount of  
19                           \$2,500 per day for each violation in accordance with Health and Safety  
20                           Code § 25249.7(b);  
21                   B.     That the court preliminarily and permanently enjoin Defendant mandating  
22                           Proposition 65 compliant warnings on the Product;  
23                   C.     That the court grant Plaintiff reasonable attorney's fees and costs of suit.  
24                   D.     That the court grant any further relief as may be just and proper.  
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26 Dated: May 15, 2017

BRODSKY & SMITH, LLC

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