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ALAMEDA COUNTY
JAN 31 2003
CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

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

11 GABRIEL ESPINOSA,
12 Plaintiff,
13 v.
14 CUSTOM ACCESSORIES, INC.,
15 Defendant.

Case No.: **RG18891161**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

16
17 Plaintiff Gabriel Espinosa ("Plaintiff"), by and through his attorneys, alleges the
18 following cause of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People's right to be informed of the health
28

BY FAX

1 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in Custom
2 steering wheel covers manufactured, distributed and/or sold in California by defendant Custom
3 Accessories, Inc. (“Custom Accessories” or “Defendant”) in California.

4 3. DINP is a harmful chemical known to the State of California to cause cancer. On
5 December 20, 2013, the State of California listed DINP as a chemical known to the State to
6 cause cancer and DINP has come under the purview of Proposition 65 regulations since that
7 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

18 6. Plaintiff alleges that Defendant manufactures, distributes, sells and/or offers for
19 sale in California, without a requisite exposure warning, Custom steering wheel covers
20 (“Product” or “Products”) that expose persons to DINP.

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

25 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or users of the Product with the required warnings related to the

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety
2 Code § 25249.7(a).

3 **PARTIES**

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

8 11. Defendant Custom Accessories, through its business, effectively manufactures,
9 imports, distributes, sells and/or offers the Products for sale or use in the State of California, or it
10 implies by its conduct that it manufactures, imports, distributes, sells and/or offers the Product
11 for sale or use in the State of California.

12 12. Plaintiff alleges that defendant Custom Accessories is a “person” in the course of
13 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

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

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

24 15. This Court has jurisdiction over Defendant because it is either a citizen of the
25 State of California, has sufficient minimum contacts with the State of California, is registered
26 with the California Secretary of State as foreign corporations authorized to do business in the
27 State of California, and/or has otherwise purposefully availed itself of the California market.

28

1 Such purposeful availment has rendered the exercise of jurisdiction by California courts
2 consistent and permissible with traditional notions of fair play and substantial justice.

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 16. On February 2, 2017, Plaintiff gave notice of alleged violation of Health and
5 Safety Code § 25249.6 (the “Notice”) to Custom Accessories concerning the exposure of
6 California citizens to DINP contained in the Products without proper warning, subject to a
7 private action to Custom Accessories and to the California Attorney General’s office and the
8 offices of the County District attorneys and City Attorneys for each city with a population
9 greater than 750,000 persons wherein the herein violations allegedly occurred.

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

27 22. The Product contains DINP, a hazardous chemical found on the Proposition 65
28 list of chemicals known to be hazardous to human health.

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

2 24. Plaintiff, based on his best information and belief, avers that at all relevant times
3 herein, and at least since December 17, 2016, continuing until the present, that Custom
4 Accessories has continued to knowingly and intentionally expose California users and consumers
5 of the Product to DINP without providing required warnings under Proposition 65.

6 25. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the product. Consequently, the primary route of
8 exposure to these chemicals is through dermal exposure. Dermal exposure can occur when the
9 user installs or removes the steering wheel cover and when the user grasps the glossy plastic
10 portion of the steering wheel cover during driving. The steering wheel cover can be expected to
11 emit gas phase DINP into the air over the lifetime of the product and emission rates are expected
12 to increase with increasing temperature. Vapor phase DINP is likely to be produced from the
13 steering wheel cover that can potentially increase exposure risk due to inhalation in the enclosed
14 spaced of the automobile cabin. A 2009 study measured phthalates in the interior air of 23
15 automobiles during the winter and summer months, with summertime temperatures inside the
16 cars reaching up to 70C. Overall concentrations of carbonyl compounds was 40% higher in the
17 summer and the most frequently detected phthalates were DnBP and DEHP with detectable
18 DEHP concentrations ranging from 335 to 3656 ng m. Gas phase DINP in the vehicle cabin can
19 be inhaled or can be absorbed to dust in the automobile that can be resuspended and potentially
20 ingested. Finally, while mouthing of the product does not seem likely, some amount of exposure
21 through ingestion can occur by touching the product with subsequent touching of the users hand
22 to mouth or indirectly by consuming food during driving while handling the steering wheel
23 cover.

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

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

1 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
2 and offering of the Products 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 Dated: January 29, 2018

BRODSKY & SMITH, LLC

21 By:  _____

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