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ENDORSED
FILED
ALAMEDA COUNTY

JUL 13 2017

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 LAMBRO INDUSTRIES, INC.,
15 LAMBRO-WEST INC.,
16 and LAMBRO INDUSTRIES
OF CALIFORNIA, INC.,

Defendant.

Case No.: RG17867326

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

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

17 Plaintiff Anthony Ferreiro ("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

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
2 flexible hoses manufactured, sold and/or distributed in California by defendant Lambro
3 Industries, Inc. and Lambro-West Inc., and Lambro Industries of California, Inc. (collectively,
4 “Lambro” or “Defendant”) in California.

5 3. DEHP is a harmful chemical known to the State of California to cause cancer. On
6 December 20, 2013, the State of California listed DEHP as a chemical known to the State to
7 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
8 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On
9 October 24, 2003, the State of California listed DEHP as a chemical known to cause
10 reproductive toxicity. *Id.*

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 in California, without the required warning, vinyl flexible hoses, including
23 but not limited to LAM266403 (“Product” or “Products”), that contain DEHP.

24 7. Defendant’s failure to warn consumers and other individuals in California of the
25 health hazards associated with exposure to DEHP 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 injunction 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 Lambro Industries, Inc. is a leading provider of venting and duct products, including hoses. Through its business, Lambro 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 Lambro-West Inc. is a leading provider of venting and duct products, including hoses. Through its business, Lambro 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.

13. Defendant Lambro Industries of California, Inc. is a leading provider of venting and duct products, including hoses. Through its business, Lambro 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.

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

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

5 21. Plaintiff is commencing this action more than sixty (60) days from the date of the
6 Notice to Lambro Industries, Inc., as required by law.

7 **FIRST CAUSE OF ACTION**

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

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

11 23. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
12 and/or retailer of the Product.

13 24. The Product contains DEHP, a hazardous chemical found on the Proposition 65
14 list of chemicals known to be hazardous to human health.

15 25. The Product does not comply with the Proposition 65 warning requirements.

16 26. Plaintiff, based on his best information and belief, avers that at all relevant times
17 herein, and at least since February 28, 2017, continuing until the present, that Lambro has
18 continued to knowingly and intentionally expose California users and consumers of the Product
19 to DEHP without providing required warnings under Proposition 65.

20 27. The exposures that are the subject of the Notice result from the purchase,
21 acquisition, handling and recommended use of the product. Consequently, the primary route of
22 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
23 DEHP by dermal absorption through direct skin contact with the white plastic during installation
24 and manipulation of the vent hose. The product can be expected to emit gas phase DEHP into
25 the air over the lifetime of the product. Discharged air vented to the outside environment that
26 passes through the vent hose poses no exposure threat to the user. Should the vent hose be used
27 to vent air into an indoor environment, exposure and subsequent intake of gas phase DEHP that
28 has leached from the inside of the ducting hose into the air stream is possible. This discharged

1 air containing gas phase DEHP can also absorb DEHP to fine particulates (dust) in the indoor
2 space. This dust containing DEHP can be suspended in the air and subsequently ingested by
3 people occupying the interior space. If the vent hose is installed in a space that is accessible to
4 interior air circulation DEHP ingestion exposure is possible as the vent hose will slowly emit
5 DEHP into the air. DEHP from the white plastic can absorb to dust on the exterior of the vent
6 hose and this dust can be resuspended and subsequently ingested. Finally, while direct mouthing
7 of the product does not seem likely, some amount of exposure through ingestion can occur by
8 touching the product with subsequent touching of the user's hand to mouth.

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

12 29. Defendant has knowledge that the normal and reasonably foreseeable use of the
13 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
14 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
15 sale and offering of the Product to consumers in California

16 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
17 Complaint.

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

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


22 **PRAYER FOR RELIEF**

23
24 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
25 following relief:
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- 1 A. That the court assess civil penalties against Defendant in the amount of
2 \$2,500 per day for each violation in accordance with Health and Safety
3 Code § 25249.7(b);
4 B. That the court preliminarily and permanently enjoin Defendant mandating
5 Proposition 65 compliant warnings on the Product;
6 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
7 D. That the court grant any further relief as may be just and proper.

8
9 Dated: July 13, 2017

BRODSKY & SMITH, LLC

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