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ALAMEDA COUNTY

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA  
13

14 ANTHONY FERREIRO,  
15 Plaintiff,  
16  
17 v.  
18 NAMEEEK'S, INC.,  
19 Defendant.

Case No.: **RG18906501**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

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

23 **BACKGROUND OF THE CASE**

24 1. Plaintiff brings this representative action on behalf of all California citizens to  
25 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
26 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,  
27 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
28 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.

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 the chemical Diisononyl phthalate (DINP), a toxic chemical found  
4 in Gedy Shower Mats manufactured, distributed and/or offered for sale by defendant Nameek’s,  
5 Inc. (“Nameek’s” or “Defendant”) in California.

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

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 manufactured, distributed and/or offered for sale  
21 in California, without the required warning, Gedy Shower Mats (“Product” or “Products”) that  
22 contain DINP.

23          7.       Defendant’s failure to warn consumers and other individuals in California of the  
24 health hazards associated with exposure to DINP 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).



1 State of California, and/or has otherwise purposefully availed itself of the California market.  
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On July 20, 2017, Plaintiff gave notice of alleged violation of Health and Safety  
6 Code § 25249.6 (the “Notice”) to Nameek’s concerning the exposure of California citizens to  
7 DINP contained in the Product without proper warning, subject to a private action to Nameek’s  
8 and to the California Attorney General’s office and the offices of the County District attorneys  
9 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
10 herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

28

1           22.     The Product contains DINP, 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 June 14, 2017, continuing until the present, that Nameek's has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DINP 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 transfer. The product can be expected to emit gas  
11 phase DINP into the air over and accumulate DINP at the surface of the item over the lifetime of  
12 the product. The bath mat is expected to be in direct contact with bare human skin during its  
13 normal, expected use. If installed in a standing shower or bathroom floor, dermal transfer of  
14 DINP to the soles of the user's feet is likely, and if installed in a bathtub, dermal transfer of  
15 DINP to a larger surface area of the user's skin will come into contact with the bath mat. This  
16 area of skin will include the user's buttocks and genitals when sitting on the mat. Additionally,  
17 dermal transfer to the user's bare hands can occur during installation and manipulation of the  
18 bath mat. The product can be expected to leach DINP into bathwater when submerged in a  
19 bathtub. Should the product come into contact with water or humidity, as may be expected  
20 during installation in a bath or shower, or the user contact the product with wet, bare skin,  
21 aqueous HMWP skin permeation rates have been reported to be faster than neat HMWP  
22 permeation. For instance, exposure to low molecular weight phthalates was reported in urinary  
23 metabolites after male showering. Finally, while mouthing of the product does not seem likely,  
24 some amount of exposure through ingestion can occur by touching the product, with subsequent  
25 touching of the user's hand to mouth.

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

