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#### SUPERIOR COURT OF THE STATE OF CALIFORNIA

#### COUNTY OF ALAMEDA

seq.)

Case No.:

INJUNCTIVE RELEIF

(Violation of Health & Safety Code §25249.5 et

ANTHONY FERREIRO,

Plaintiff,

Defendant.

vs.

TRACTOR SUPPLY COMPANY.

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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**

- Plaintiff brings this representative action on behalf of all California citizens to 1. 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.
- 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 hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in safety gloves and tow straps sold and/or distributed by defendant Tractor Supply Company ("TSC" or "Defendant") in California.

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF - VIOLATION OF HEALTH & SAFETY CODE §25249.5

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- DINP is a harmful chemical known to the State of California to cause cancer. On December 20, 2013, the State of California listed DINP as a chemical known to the State to cause cancer and DINP has come under the purview of Proposition 65 regulations since that || time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
- Proposition 65 requires all businesses with ten (10) or more employees that 6 | operate within California or sell products therein to comply with Proposition 65 regulations. 7 | Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and | intentionally" exposing any person to it.
- Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation 11 || to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety 12 | Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute. Health & Safety Code § 25249.7.
  - Plaintiff alleges that Defendant distributes, sells and/or offers for sale in California, without a requisite exposure warning (a) chainsaw safety gloves, and (b) tow straps (the "Products") that expose persons to DINP.
- Defendant's failure to warn consumers and other individuals in California of the 19 | health hazards associated with exposure to DINP in conjunction with the sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinment and civil penalties described herein.
  - Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b).
  - Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendant to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code § 25249.7(a).

## **PARTIES**

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- 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).
- Defendant TSC, through its business, 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 Products for sale
  or use in the State of California.
  - 12. Plaintiff alleges that defendant TSC 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**

- 12 | 13. Venue is proper in the County of Alameda because one or more of the instances 13 | of wrongful conduct occurred, and continue to occur in this county and/or because Defendant 14 | conducted, and continues to conduct, business in the County of Alameda with respect to the 15 | Products.
  - 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.
  - of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or has otherwise purposefully availed itself of the California market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

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# SATISFACTION OF NOTICE REQUIREMNTS

- On December 12, 2017, and on January 10, 2018, Plaintiff gave notice of alleged violations of Health and Safety Code § 25249.6 (the "Notices") to Defendant concerning the exposure of California citizens to DINP contained in the Products without proper warning, subject to a private action to Defendant and to the California Attorney General's office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.
- The Notices complied with all procedural requirements of Proposition 65 | including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted 10 with at least one person with relevant and appropriate expertise who reviewed relevant data 11 | regarding DINP exposure, and that counsel believed there was meritorious and reasonable cause 12 || for a private action.
- After receiving the Notices, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted 15 | a cause of action against Defendant under Proposition 65 to enforce the alleged violations which 16 | are the subject of Plaintiff's notices of violation.
  - Plaintiff is commencing this action more than sixty (60) days from the date of the Notices to Defendant, as required by law.

## FIRST CAUSE OF ACTION

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

- Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of this complaint as though fully set forth herein.
- Defendant has, at all times mentioned herein, acted as a distributer and/or retailer of the Products.
- The Products contain DINP, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.
  - The Products do not comply with the Proposition 65 warning requirements.

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- Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since November 15, 2017, that Defendant has continued to knowingly and | intentionally expose California users and consumers of the Products to DINP without providing required warnings under Proposition 65.
- The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Product. Consequently, the primary route of exposure to these chemicals in the safety gloves is through dermal absorption. Dermal exposure through direct contact with the user's hands is possible during application, removal, and manipulation of the work gloves. Dermal exposure is also possible if the PVC comes into 10 contact with the other areas of the user's exposed skin. Should the PVC become wet, the user 11 || grasp the glove with wet hands, or the PVC contact water/perspiration on the user's skin, skin 12 | permeation rates can potentially increase as aqueous HMWP skin permeation rates are faster 13 || than neat HMWP permeation. If the gloves are stored or transported in a carrier, DINP that 14 | leaches from the product may contaminate other articles contained within these closed spaces are 15 || subsequently handled, worn, mouthed, or consumed. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the user's hand to mouth while wearing the gloves or handling items that come into contact with the PVC that are subsequently consumed.
  - The primary route of exposure to these chemicals in the tow straps is through dermal absorption. Initial exposure would result from directly touching or holding the item during normal use. For example, in this case dermal exposure would result every time the case is transported or handled in order to open it or close it while removing and then replacing the tow strap. Ingestion would then occur from hand to mouth contact, for example, from eating after having handled the item.
  - Plaintiff, based on his best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to Product purchasers and users or until this known toxic chemical is removed from the Product.

1	28. Defer	Defendant has knowledge that the normal and reasonably foreseeable use of the			
2	2 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur				
3	3 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of				
4	the Products to const	umers in California			
5	29. Plaint	Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this			
6	Complaint.				
7	30. Pursu	ant to Health and Safety Code § 25249.7(b), as a consequence of the above			
8	8 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.				
9	31. Pursu	ant to Health and Safety Code § 25249.7(a), this Court is specifically			
10	authorized to grant injunctive relief in favor of Plaintiff and against Defendant.				
11	PRAYER FOR RELIEF				
12	WHEREFORE, Plaintiff demands judgment against Defendant and requests the				
13	13 following relief:				
14	A.	That the court assess civil penalties against Defendant in the amount of			
15		\$2,500 per day for each violation in accordance with Health and Safety			
16		Code § 25249.7(b);			
17	В.	That the court preliminarily and permanently enjoin Defendant mandating			
18		Proposition 65 compliant warnings on the Product;			
19	C.	That the court grant Plaintiff reasonable attorney's fees and costs of suit.			
20	D.	That the court grant any further relief as may be just and proper.			
21	D . 1 . 1 . 2 . 2014				
22	Dated: July 26, 2018	9			
23		By: Evan J. Smith (SBN242352)			
24		Ryan P. Cardona (SBN302113) 9595 Wilshire Boulevard, Suite 900			
25		Beverly Hills, CA 90212			
26		Telephone: (877) 534-2590 Facsimile: (310) 247-0160			
27		Attorneys for Plaintiff			
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В.	That the court preliminarily and permanently enjoin Defendant mandating		
	Proposition 65 compliant warnings on the Product;		
C.	That the court grant Plaintiff reasonable attorney's fees and costs of suit.		
D.	That the court grant any further relief as may be just and proper.		
rated: July 26, 2018	BRODSKY & SMITH, LLC  By: Evan J. Smith (SBN242352) Ryan P. Cardona (SBN302113) 9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160  Attorneys for Plaintiff  - 6 -		
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