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ENDORSED
FILED
ALAMEDA COUNTY

MAY 30 2018

CLERK OF SUPERIOR COURT
By CURTIAN CAITAN
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
12 Plaintiff,
13 v.
14 WEBER-STEPHEN PRODUCTS, LLC,
15 Defendant.

Case No.: **RG18906799**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

17 Plaintiff Anthony Ferreiro (“Plaintiff” or “Ferreiro”), by and through his attorneys,
18 alleges the following cause of action in the public interest of the citizens of the State of
19 California.

20 **BACKGROUND OF THE CASE**

21 1. Plaintiff brings this representative action on behalf of all California citizens to
22 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
23 at the Health and Safety Code § 25249.5 *et seq* (“Proposition 65”), which reads, in relevant part,
24 “[n]o person in the course of doing business shall knowingly and intentionally expose any
25 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
26 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.
27
28

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 CARBON MONOXIDE, a toxic chemical byproduct from the use
4 of Weber Lighter Cubes that are manufactured, distributed, offered for sale and/or sold by
5 defendant Weber-Stephen Products, LLC (“Defendant”) in California. Weber Lighter Cubes are
6 used primarily for cooking, in order to promote fast and easy charcoal ignition. Combustion of
7 charcoal produces CARBON MONOXIDE which is then inhaled by persons causing exposure to
8 the chemical.

9 3. CARBON MONOXIDE is a harmful chemical known to the State of California to
10 cause birth defects and other reproductive harm. On July 1, 1989, the State of California listed
11 CARBON MONOXIDE as a chemical known to the State to cause birth defects and other
12 reproductive harm and CARBON MONOXIDE has come under the purview of Proposition 65
13 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
14 25249.8 & 25249.10(b).

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

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

25 6. Plaintiff alleges that Defendant manufacture, distribute and/or offer for sale in
26 California, without the required exposure warning, Weber Lighter Cubes (“Product” or
27 “Products”) that expose persons to CARBON MONOXIDE.
28

1 7. Defendant's failure to warn consumers and other individuals in California of the
2 health hazards associated with exposure to CARBON MONOXIDE in conjunction with the sale,
3 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
4 Defendant to the enjoinder and civil penalties described herein.

5 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
6 65 in accordance with Health and Safety Code § 25249.7(b).

7 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
8 Defendant to provide purchasers or users of the Product with the required warnings related to the
9 dangers and health hazards associated with exposure to CARBON MONOXIDE pursuant to
10 Health and Safety Code § 25249.7(a).

11 **PARTIES**

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

16 11. Defendant, through its business, effectively manufactures, imports, distributes,
17 sells, and/or offers the Product for sale or use in the State of California, or it implies by its
18 conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use
19 in the State of California.

20 12. Plaintiff alleges that Defendant is a "person" in the course of doing business
21 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

22 **VENUE AND JURISDICTION**

23 13. Venue is proper in the County of Alameda because one or more of the instances
24 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
25 conducts, and continues to conduct, business in the County of Alameda with respect to the
26 Product.

27 14. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

4 15. This Court has jurisdiction over Defendant because Defendant is either a citizen
5 of the State of California, has sufficient minimum contacts with the State of California, is
6 registered with the California Secretary of State as foreign corporations authorized to do business
7 in the State of California, and/or has otherwise purposefully availed itself of the California
8 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
9 consistent and permissible with traditional notions of fair play and substantial justice.

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 16. On January 8, 2018, Plaintiff gave notice of alleged violation of Health and Safety
12 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to
13 CARBON MONOXIDE contained in the Product without proper warning, subject to a private
14 action to Defendant and to the California Attorney General’s office and the offices of the County
15 District attorneys and City Attorneys for each city with a population greater than 750,000
16 persons wherein the herein violations allegedly occurred.

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

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

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

28

FIRST CAUSE OF ACTION

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

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

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

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

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

24. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since October 23, 2017, continuing until the present, that Defendant has continued to knowingly and intentionally expose California users and consumers of the Product to CARBON MONOXIDE without providing required warnings under Proposition 65.

25. The exposures that are the subject of the Notice result from combustion and inhalation of the Products. The Products are used primarily for cooking, in order to promote fast and easy charcoal ignition. Combustion of charcoal produces and exposes people to CARBON MONOXIDE. Because the combustion of charcoal causes carbon monoxide to be released in the air, people using charcoal-burning grills, and others standing near the products when charcoal is burning in or on the Products, inhale CARBON MONOXIDE. Consequently, a primary route of exposure to the chemicals contained in these Products is through inhalation. Inhalation exposure occur when persons using these Products, or persons nearby when the products are being used, inhale that which is emitted during its use. The Products cause CARBON MONOXIDE exposures to occur in people's yards and everywhere else throughout California where these Products are used. These violations occur during the foreseeable use of the Products and when the Products are used as intended.

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

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

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
14 following relief:

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

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23 Dated: May 30, 2018

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