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ENDORSED
FILED
ALAMEDA COUNTY
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5 *Attorneys for Plaintiff*

CLERK OF THE SUPERIOR COURT,
By Lanette Buffin, Deputy

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

10 ANTHONY FERREIRO,
11 Plaintiff,
12 v.
13 ALLEGRO INDUSTRIES,
14 Defendant.

Case No.: *AG* 18902236

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

15
16 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
17 alleges the following cause of action in the public interest of the citizens of the State of
18 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 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

BY FAX

1 Allegro Vortex Cooling Vests manufactured, distributed, offered for sale and/or sold by
2 defendant Allegro Industries (“Allegro” or “Defendant”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and
4 birth defects and other reproductive harm. On January 1, 1988, the State of California listed
5 DEHP as a chemical known to the State to cause cancer and DEHP has come under the purview
6 of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health &
7 Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed
8 DEHP as a chemical known to cause birth defects and other reproductive harm.

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

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

19 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
20 California, without the required exposure warning, Allegro Vortex Cooling Vests and accessory
21 component parts (“Product” or “Products”) that contain DEHP.

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

26 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
27 65 in accordance with Health and Safety Code § 25249.7(b).

28

1 in the State of California, and/or has otherwise purposefully availed itself of the California
2 market. 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 January 30, 2018, Plaintiff gave notice of alleged violation of Health and
6 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California
7 citizens to DEHP contained in the Product without proper warning, subject to a private action to
8 Defendant and to the California Attorney General’s office and the offices of the County District
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons
10 wherein the 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 DEHP 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 Defendant 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 Defendant, 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 either a manufacturer,
27 distributor and/or retailer of the Product.

28

1 22. The Product contains DEHP, 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 November 30, 2017, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to DEHP 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 absorption. The product can be expected to emit
11 gas phase DEHP into the air and accumulate DEHP at the surface over the lifetime of the
12 product. Users may potentially be exposed to DEHP by dermal absorption through direct skin
13 contact with the vest when it is handled or worn in contact with bare skin. Should the vest
14 become wet while wearing it, aqueous DEHP skin permeation rates are faster than neat DEHP
15 permeation. Cooling air that is passed through the vest can product gas phase DEHP in the
16 vicinity of the user's body and face and if this gas phase DEHP is breathed in, ingestion of
17 DEHP can occur. Clothing worn under the vest are likely to absorb DEHP. The contaminated
18 articles of clothing will continue to be a source of dermal transfer after the vest is removed. If
19 the vest is stored or transported in a carrier, DEHP that leaches from the vinyl may contaminate
20 other articles contained within these closed spaces that re subsequently handled, worn, or
21 ingested by the user. Finally, while mouthing of the product does not seem likely, some amount
22 of exposure through ingestion can occur by touching the product with subsequent touching of the
23 user's hand to mouth.

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 DEHP, and Defendant intends that exposures to DEHP will occur

1 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
2 and offering of the Product 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: April 24, 2018

BRODSKY & SMITH, LLC

21 By:  _____

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