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ENDORSED
FILED
ALAMEDA COUNTY

AUG 13 2018

CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,

12 v.

13 BLACK DIAMOND INTERNATIONAL
14 FOREST GROUP, LLC, TRUE VALUE
15 COMPANY, LLC,
16 Defendants.

Case No.:

RG18916367

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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 CARBON MONOXIDE, a toxic chemical byproduct from the use

1 of Black Diamond fire starters that are manufactured, distributed, offered for sale and/or sold by
2 defendants Black Diamond International Forest Group, LLC (“Black Diamond”), and True
3 Value Company, LLC (“True Value”) (collectively, “Defendants”) in California. Black
4 Diamond fire starters are used primarily for cooking, in order to promote fast and easy charcoal
5 ignition. Combustion of charcoal produces CARBON MONOXIDE which is then inhaled by
6 persons causing exposure to the chemical.

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

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

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

23 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in
24 California, without the required exposure warning, Black Diamond fire starters (“Product” or
25 “Products”) that expose persons to CARBON MONOXIDE.

26 7. Defendants’ failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to CARBON MONOXIDE in conjunction with the sale,
28

1 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
2 Defendants to the enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of
4 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

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

9 **PARTIES**

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

14 11. Defendant Black Diamond, through its business, effectively manufactures,
15 imports, distributes, sells, and/or offers the Product for sale or use in the State of California, or it
16 implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product
17 for sale or use in the State of California. Plaintiff alleges that Black Diamond is a “person” in
18 the course of doing business within the meaning of Health & Safety Code sections 25249.6 and
19 25249.11.

20 12. Defendant True Value, through its business, effectively imports, distributes, sells,
21 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that
22 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
23 California. Plaintiff alleges that True Value is a “person” in the course of doing business within
24 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

25 **VENUE AND JURISDICTION**

26 13. Venue is proper in the County of Alameda because one or more of the instances
27 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
28 conduct, and continue to conduct, business in the County of Alameda with respect to the Product.

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