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ENDORSED
FILED
ALAMEDA COUNTY

MAY 11 2020

CLERK OF THE SUPERIOR COURT
Joshua T.N. Rose

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

9
10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 SIERRA TRADING POST, INC.,
14 Defendant.

Case No.: HG19030006

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELEIF**

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

Judge: Robert McGuiness
Dept.: 25

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

17 **BACKGROUND OF THE CASE**

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

24 2. This first amended complaint is a representative action brought by Plaintiff in the
25 public interest of the citizens of the State of California to enforce the People's right to be
26 informed of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic
27 chemical found in WayPoint dry paks/bags sold and/or distributed by defendants Sierra Trading
28

1 Post, Inc. (“Sierra Trading Post”) and Cerf Products Inc. (“Cerf”) (collectively, “Defendants”) in
2 California.

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

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 or threaten to violate” the statute. Health & Safety
18 Code § 25249.7.

19 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
20 without a requisite exposure warning, WayPoint dry paks/bags (the “Products”) that expose
21 persons to DEHP.

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

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

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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 Defendants because each Defendant is either a
5 citizen 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 October 11, 2018, Plaintiff gave notice of alleged violation of Health and
12 Safety Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California
13 citizens to DEHP contained in the Products without proper warning, subject to a private action to
14 Defendant and to the California Attorney General’s office and the offices of the County District
15 attorneys and City Attorneys for each city with a population greater than 750,000 persons
16 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 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
21 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 Defendants under Proposition 65 to enforce the alleged violations which
25 are the subject of the Notice.

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

28 **FIRST CAUSE OF ACTION**

1 **(By Plaintiff against Defendants for their Violation of Proposition 65)**

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

4 21. Defendants have, at all times mentioned herein, acted as either the manufacturer,
5 distributor and/or retailer of the Products.

6 22. The Products contain DEHP, a hazardous chemical found on the Proposition 65
7 list of chemicals known to be hazardous to human health.

8 23. The Products do not comply with the Proposition 65 warning requirements.

9 24. Plaintiff, based on his best information and belief, avers that at all relevant times
10 herein, and at least since September 14, 2018, continuing until the present, that Defendants have
11 continued to knowingly and intentionally expose California users and consumers of the Products
12 to DEHP without providing required warnings under Proposition 65.

13 25. The exposures that are the subject of the Notice result from the purchase,
14 acquisition, handling and recommended use of the Products. Consequently, the primary route of
15 exposure to DEHP from use of the Products is through dermal absorption. Users may be exposed
16 to DEHP by dermal absorption through direct skin contact with the Products during routine use
17 when the black material is manipulated with bare hands. If the Product is handled with wet hands
18 or the black material is wet, aqueous DEHP skin permeation rates have been reported to be faster
19 than neat DEHP permeation. Concentrations of gas phase DEHP can be expected to build within
20 the enclosed interior of the Products. This gas phase DEHP can potentially be absorbed to the
21 surface of the interior contents which can subsequently be handled, worn, mouthed, or ingested
22 by the user. If the Products are stored or transported in a carrier, DEHP that leaches from the
23 Products may contaminate other articles contained within these closed spaces that are
24 subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the
25 Products do not seem likely, some amount of exposure through ingestion can occur by touching
26 the Products with subsequent touching of the user's hand to mouth.

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