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ENDORSED
FILED
ALAMEDA COUNTY

NOV 22 2019

CLERK OF SUPERIOR COURT
By [Signature]
JANIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

13 MANN & BROS., INC.,

14 Defendant.

Case No.:

RG19044515

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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 complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in car
27 seat and steering wheel covers sold and/or distributed by defendant Mann & Bros., Inc. ("Mann"
28 or "Defendant") in California.

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

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

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

17 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
18 California, without a requisite exposure warning, Wolverine (a) seat covers, and (b) steering
19 wheel cover (collectively, the “Products”) that expose persons to DEHP.

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

24 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
25 65 in accordance with Health and Safety Code § 25249.7(b).

26 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
27 Defendant to provide purchasers or users of the Products with required warnings related to the
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1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
2 Code § 25249.7(a).

3 **PARTIES**

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

8 11. Defendant Mann, through its business, effectively manufactures, imports,
9 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
10 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale
11 or use in the State of California.

12 12. Plaintiff alleges that defendant Mann is a “person” in the course of doing business
13 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 13. Venue is proper in the County of Alameda because one or more of the instances
16 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
17 conducted, and continues to conduct, business in the County of Alameda with respect to the
18 Products.

19 14. This Court has jurisdiction over this action pursuant to California Constitution
20 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
21 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
22 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
23 this Court has jurisdiction over this lawsuit.

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

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 16. On December 3, 2018, Plaintiff gave notice of alleged violation of Health and
5 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California
6 citizens to DEHP contained in the Products without proper warning, subject to a private action to
7 Defendant and to the California Attorney General's office and the offices of the County District
8 attorneys and City Attorneys for each city with a population greater than 750,000 persons
9 wherein the herein violations allegedly occurred.

10 17. The Notice complied with all procedural requirements of Proposition 65 including
11 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
12 least one person with relevant and appropriate expertise who reviewed relevant data regarding
13 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
14 private action.

15 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
16 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
17 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
18 are the subject of the Notice.

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

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

2 24. Plaintiff, based on his best information and belief, avers that at all relevant times
3 herein, and at least since June 30, 2018 (seat cover) and October 20, 2018 (wheel cover),
4 continuing until the present, that Defendant has continued to knowingly and intentionally expose
5 California users and consumers of the Products to DEHP without providing required warnings
6 under Proposition 65.

7 25. The exposures that are the subject of the Notice result from the purchase,
8 acquisition, handling and recommended use of the Product. Consequently, the primary route of
9 exposure to DEHP in the seat covers is through dermal absorption. Dermal absorption of DEHP
10 can occur through direct skin contact with the seat covers during routine use when the seat
11 covers is gasped, opened or manipulated with bare hands. Concentrations of DEHP can be
12 expected to build within the small, enclosed interior of the case. This gas phase and surface
13 DEHP can potentially be absorbed to the surface of the car seats that can be subsequently
14 handled or held in direct contact with skin when they are fitted on car seats where the DEHP
15 contaminated car seats will be a source of dermal exposure. If the seat covers are kept in an
16 automobile, vapor phase DEHP is likely to be produced that can potentially increase exposure
17 risk due to the enclosed space of the vehicle cabin. A 2009 study measured phthalates in the
18 interior air of 23 automobiles during the winter and summer months, with summertime
19 temperatures inside the cars reaching up to 70 degrees centigrade. Overall concentrations of
20 carbonyl compounds was 40% higher in the summer and the most frequently detected phthalates
21 were DnBP and DEHP with detectable DEHP concentrations ranging from 335 to 3656 ng m.
22 Finally, while mouthing of the seat covers does not seem likely, some amount of exposure
23 through ingestion can occur by touching the seat covers with subsequent touching of the user's
24 hand to mouth.

25 26. The primary route of exposure to DEHP in the steering wheel covers is through
26 dermal absorption. Dermal absorption of DEHP can occur through direct skin contact with the
27 steering wheel covers during routine use when the steering wheel covers are grasped with bare
28 hands during driving. Concentrations of gas phase DEHP can be expected to build within the

1 small, enclosed interior of the vehicle cabin. This gas phase DEHP can be inhaled by the vehicle
2 occupants. A 2009 study measured phthalates in the interior air of 23 automobiles during the
3 winter and summer months, with summertime temperatures inside the cars reaching up to 70°C.
4 Overall concentrations of carbonyl compounds was 40% higher in the summer ranging from 335
5 to 3656 ng m. Finally, while mouthing of the steering wheel covers does not seem likely, some
6 amount of exposure through ingestion can occur by touching the steering wheel covers with
7 subsequent touching of the user's hand to mouth.

8 27. Plaintiff, based on his best information and belief, avers that such exposures will
9 continue every day until clear and reasonable warnings are provided to users and purchasers of
10 the Products or until this DEHP is removed from the Products.

11 28. Defendant has knowledge that the normal and reasonably foreseeable use of the
12 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will
13 occur by its deliberate, non-accidental participation in the manufacture, importation, distribution,
14 sale and offering of the Products to consumers in California.

15 29. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
16 Complaint.

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

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

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
23 following relief:

24 A. That the court assess civil penalties against Defendant in the amount of
25 \$2,500 per day for each violation in accordance with Health and Safety
26 Code § 25249.7(b);


27 B. That the court preliminarily and permanently enjoin Defendant mandating
28 Proposition 65 compliant warnings on the Product;

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- 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.

Dated: November 22, 2019

BRODSKY & SMITH, LLC

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