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9 **ENDORSED
FILED
ALAMEDA COUNTY**

10 **DEC 06 2019**

11 CLERK OF THE SUPERIOR COURT

12 By David G. Drew Deputy

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 ANTHONY FERREIRO,
16 Plaintiff,
17 vs.
18 HARBOR FREIGHT TOOLS USA,
19 INC.,
20 Defendant.

21 Case No.: **RG19045974**
22 **COMPLAINT FOR CIVIL PENALTIES AND**
23 **INJUNCTIVE RELIEF**
24 (Violation of Health & Safety Code § 25249.5 et seq.)

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

27 **BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest
of the citizens of the State of California to enforce the People's right to be informed of the health
hazards caused by exposure to chromium VI (CrVI), a toxic chemical found in leather gloves

1 sold and/or distributed by defendant Harbor Freight Tools USA, Inc. (“Harbor Freight” or
2 “Defendant”) in California.

3 3. CrVI is a harmful chemical known to the State of California to cause cancer and
4 reproductive toxicity. On February 27, 1987, the State of California listed CrVI 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 December 19, 2008, the State of California listed CrVI 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 Defendant manufactures, distributes and/or offers for sale in
20 California, without a requisite exposure warning, leather gloves (the “Products”) that expose
21 persons to CrVI.

22 7. Defendant’s failure to warn consumers and other individuals in California of the
23 health hazards associated with exposure to CrVI 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 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 July 23, 2019, Plaintiff gave notice of alleged violation of Health and Safety
6 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to
7 CrVI contained in the Products without proper warning, subject to a private action to Defendant
8 and to the California Attorney General’s office and the offices of the County District attorneys
9 and City Attorneys for each city with a population greater than 750,000 persons wherein the
10 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 CrVI 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 the Notice.

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 manufacturer, distributor,
27 and/or retailer of the Product.

28

1 22. The Products contain CrVI, a hazardous chemical found on the Proposition 65 list
2 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 July 23, 2019, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to CrVI 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 exposure. Increased duration of contact with the
11 leather, natural aging of the product, temperature, light exposure, and contact of the product with
12 oxidizing agents and alkaline solutions will result in increased conversion of chromium(III) to
13 CrVI in the product and thus increased dermal exposure to CrVI. Direct mouthing of the glove
14 fingertips and indirect hand to mouth exposure to CrVI following wearing are possible additional
15 CrVI exposure routes.

16 26. Plaintiff, based on his best information and belief, avers that such exposures will
17 continue every day until clear and reasonable warnings are provided to Product purchasers and
18 users or until this known toxic chemical is removed from the Product.

19 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
20 Product exposes individuals to CrVI, and Defendant intends that exposures to CrVI will occur by
21 its deliberate, non-accidental participation in the manufacture, importation, distribution, sale and
22 offering of the Products to consumers in California.

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

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
3 following relief:

- 4 A. That the court assess civil penalties against Defendant in the amount of
5 \$2,500 per day for each violation in accordance with Health and Safety
6 Code § 25249.7(b);
- 7 B. That the court preliminarily and permanently enjoin Defendant mandating
8 Proposition 65 compliant warnings on the Product;
- 9 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 10 D. That the court grant any further relief as may be just and proper.

11 Dated: December 5, 2019

BRODSKY & SMITH, LLC

12 By:  _____

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