

FILED

JAN 13 2020

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Thomason, Deputy

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MARIN

11 ANTHONY FERREIRO,  
12 Plaintiff,

13 vs.

14 BOOT BARN, INC.,  
15 Defendant,

Case No.: CW

2000140

COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People’s right to be informed of the health  
27 hazards caused by exposure to chromium (VI), a toxic chemical found in Cody James leather  
28

1 gloves sold and/or distributed by defendant Boot Barn, Inc. (“Boot Barn” or “Defendant”) in  
2 California.

3 3. Chromium (VI) is a harmful chemical known to the State of California to cause  
4 cancer and adverse developmental effects in both males and females. On February 27, 1987, the  
5 state of California listed chromium (VI) as a chemical known to cause cancer and it has come  
6 under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §  
7 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). On December 19, 2008, the State of  
8 California listed chromium (VI) as a chemical known to cause adverse developmental effects in  
9 both males and females.

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

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

20 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in  
21 California, without a requisite exposure warning, Cody James leather gloves (the “Products”)  
22 that expose persons to Chromium (VI).

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

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).



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 October 8, 2019, 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 chromium (VI) contained in the Products without proper warning, subject to a private  
8 action to Defendant and to the California Attorney General's office and the offices of the County  
9 District attorneys and City Attorneys for each city with a population greater than 750,000  
10 persons 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 chromium (VI) exposure, and that counsel believed there was meritorious and reasonable cause  
15 for a 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 Products.

1           22.     The Products contain chromium (VI), a hazardous chemical found on the  
2 Proposition 65 list of chemicals known to be hazardous to human health.

3           23.     The Products do 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 October 8, 2019, continuing until the present, that Defendant has  
6 continued to knowingly and intentionally expose California users and consumers of the Products  
7 to chromium (VI) without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of this notice result from the purchase,  
9 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
10 exposure to these chemicals is through dermal exposure. Increased duration of contact with the  
11 Products, natural aging of the Products, temperature, light exposure, and contact of the Products  
12 with oxidizing agents and alkaline solutions will result in increased conversion of chromium (III)  
13 to chromium(VI) in the Products and thus increased dermal exposure to chromium(VI). Direct  
14 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) following  
15 wearing are possible additional chromium (VI) 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 purchasers and users or  
18 until this known toxic chemical is removed from the Products.

19           27.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
20 Products exposes individuals to chromium (VI), and Defendant intends that exposures to  
21 chromium (VI) will occur by its deliberate, non-accidental participation in the manufacture,  
22 importation, distribution, sale and 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: January 10, 2020

BRODSKY & SMITH, LLC

12 By: 

13 Evan J. Smith (SBN242352)

Ryan P. Cardona (SBN302113)

14 9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

15 Telephone: (877) 534-2590

16 Facsimile: (310) 247-0160

17 *Attorneys for Plaintiff*