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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By M. Williams Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 Case No.: **HG 20064308**

12 GABRIEL ESPINOZA,
13 Plaintiff,
14 vs.
15 MIDWEST QUALITY GLOVES, INC.,
16 Defendant.

17 **COMPLAINT FOR CIVIL PENALTIES AND
18 INJUNCTIVE RELIEF**
19 (Violation of Health & Safety Code § 25249.5 et
20 seq.)

21 Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the following
22 cause of action in the public interest of the citizens of the State of California.

23 **BACKGROUND OF THE CASE**

24 1. Plaintiff brings this representative action on behalf of all California citizens to
25 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
26 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
27 "[n]o person in the course of doing business shall knowingly and intentionally expose any
28 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), a toxic chemical found in Midwest pigskin gloves
sold and/or distributed by defendant Midwest Quality Gloves, Inc. ("Midwest" or the "Defendant")
in California.

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

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

13 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
14 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
15 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
16 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
17 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
18 25249.7.

19 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
20 without a requisite exposure warning, Midwest pigskin gloves (the “Products”) that expose persons
21 to chromium (VI).

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

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

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
2 permissible with traditional notions of fair play and substantial justice.

3 **STATUTORY BACKGROUND**

4 16. The people of the State of California declared in Proposition 65 their right “[t]o be
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
6 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

7 17. To effect this goal, Proposition 65 requires that individuals be provided with a
8 “clear and reasonable warning” before being exposed to substances listed by the State of California
9 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

10 No person in the course of doing business shall knowingly and intentionally expose any
11 individual to a chemical known to the state to cause cancer or reproductive toxicity without
12 first giving clear and reasonable warning to such individual...

13 18. An exposure to a chemical in a consumer product is one “which results from a
14 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
15 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
16 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
17 shall provide a warning to any person to whom the product is sold or transferred unless the product
18 is packaged or labeled with a clear and reasonable warning.”

19 19. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
20 more of the following methods individually or in combination:¹

- 21 a. A warning that appears on a product’s label or other labeling.
- 22 b. Identification of the product at the retail outlet in a manner which provides a
23 warning. Identification may be through shelf labeling, signs, menus, or a
24 combination thereof.
- 25 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
26 prominently placed upon a product’s labels or other labeling or displayed at the
27 retail outlet with such conspicuousness, as compared with other words,

28 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning requirements set out in the amended version of 27 CCR 25601, *et.seq.*, as amended on August 30, 2016, and operative on August 30, 2018.

1 statements, designs, or devices in the label, labeling or display as to render it
2 likely to be read and understood by an ordinary individual under customary
conditions of purchase or use.

- 3 d. A system of signs, public advertising identifying the system and toll-free
4 information services, or any other system that provides clear and reasonable
5 warnings.

6 20. Proposition 65 provides that any “person who violates or threatens to violate” the
7 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
8 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
9 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
10 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
11 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

12 **FACTUAL BACKGROUND**

13 21. On February 27, 1987, the State of California listed chromium (VI) as a chemical
14 known to the State to cause cancer and it has come under the purview of Proposition 65 regulations
15 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
16 25249.10(b). On December 19, 2008, the State of California listed chromium (VI) as a chemical
17 known to cause adverse developmental effects in both males and females. In summary, the Listed
18 Chemical was listed under Proposition 65 as a chemical known to the State to cause cancer and
19 adverse developmental effects in both males and females.

20 22. The consumer exposures that are the subject of this Complaint from the purchase,
21 acquisition, handling and recommended use of the Products. Consequently, the primary route of
22 exposure to these chemicals is through dermal exposure. Increased duration of contact with the
23 leather, natural aging of the Products, temperature, light exposure, and contact of the Products with
24 oxidizing agents and alkaline solutions will result in increased conversion of chromium(III) to
25 chromium(VI) in the Products and thus increased dermal exposure to chromium(VI). Direct
26 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) following
27 wearing are possible additional chromium (VI) exposure routes.
28

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

3 **FIRST CAUSE OF ACTION**

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

5 30. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 29 of
6 this Complaint as though fully set forth herein.

7 31. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
8 the Products.

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

11 33. The Products do not comply with the Proposition 65 warning requirements.

12 34. Plaintiff, based on his best information and belief, avers that at all relevant times
13 herein, and at least since December 10, 2019, continuing until the present, that Defendant has
14 continued to knowingly and intentionally expose California users and consumers of the Products
15 to chromium (VI) without providing required warnings under Proposition 65.

16 35. The consumer exposures that are the subject of this Complaint from the purchase,
17 acquisition, handling and recommended use of the Products. Consequently, the primary route of
18 exposure to these chemicals is through dermal exposure. Increased duration of contact with the
19 leather, natural aging of the Products, temperature, light exposure, and contact of the Products with
20 oxidizing agents and alkaline solutions will result in increased conversion of chromium(III) to
21 chromium(VI) in the Products and thus increased dermal exposure to chromium(VI). Direct
22 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) following
23 wearing are possible additional chromium (VI) exposure routes.

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

27 37. Defendant has knowledge that the normal and reasonably foreseeable use of the
28 Products exposes individuals to chromium (VI), and Defendant intends that exposures to

1 chromium (VI) will occur by its deliberate, non-accidental participation in the importation,
2 distribution, sale and offering of the Products to consumers in California

3 38. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
4 Complaint.

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

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


9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
11 relief:

- 12 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
13 per day for each violation for up to 365 days (up to a maximum civil penalty amount
14 per violation of \$912,000.00) in accordance with Health and Safety Code §
15 25249.7(b);
- 16 B. That the court preliminarily and permanently enjoin Defendant mandating
17 Proposition 65 compliant warnings on the Product;
- 18 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 19 D. That the court grant any further relief as may be just and proper.

20 Dated: May 29, 2020

BRODSKY & SMITH, LLC

21 By:  _____

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