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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

05/19/2021
Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 TARGET CORPORATION,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

CGC-21-592018

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

16 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following
17 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 at
21 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 (hexavalent compounds) (“chromium (VI)”), a toxic
28 chemical found in leather gloves, including but not limited to Powerbilt TPS Cabretta Tour golf

1 gloves, UPC #852674702229, sold and/or distributed by defendant Target Corporation (“Target”
2 or the “Defendant”) in 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 the State to cause cancer and it
6 has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27,
7 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On December 19, 2008, the State
8 of California listed chromium (VI) as a chemical known to cause adverse developmental effects
9 in both males and females.

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

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
16 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
17 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
18 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
19 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
20 25249.7.

21 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
22 without a requisite exposure warning, leather gloves, including but not limited to Powerbilt TPS
23 Cabretta Tour golf gloves, UPC #852674702229 (the “Products”) that expose persons to chromium
24 (VI).

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

1 and thus increased dermal exposure to chromium (VI). Direct mouthing of the Products and
2 indirect hand to mouth exposure to chromium (VI) during use are possible and additional
3 chromium (VI) exposure routes following wearing.

4 24. Defendant has manufactured, processed, marketed, distributed, offered to sell
5 and/or sold the Products in California since at least August 3, 2020. The Products continue to be
6 distributed and sold in California without the requisite warning information.

7 25. At all times relevant to this action, Defendant has knowingly and intentionally
8 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
9 giving a clear and reasonable exposure warning to such individuals.

10 26. As a proximate result of acts by each defendant, as a person in the course of doing
11 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
12 California, including in San Francisco County, have been exposed to the Listed Chemical without
13 a clear and reasonable warning on the Products. The individuals subject to the violative exposures
14 include normal and foreseeable users, consumers and patients that use the Products, as well as all
15 others exposed to the Products.

16 **SATISFACTION OF NOTICE REQUIREMENTS**

17 27. On August 3, 2020, Plaintiff gave notice of alleged violation of Health and Safety
18 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
19 chromium (VI) contained in the Products without proper warning, subject to a private action to
20 Defendant and to the California Attorney General's office and the offices of the County District
21 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
22 the herein violations allegedly occurred.

23 28. The Notice complied with all procedural requirements of Proposition 65 including
24 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
25 least one person with relevant and appropriate expertise who reviewed relevant data regarding
26 chromium (VI) exposure, and that counsel believed there was meritorious and reasonable cause
27 for a private action.

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

4 38. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to chromium (VI), and Defendant intends that exposures to chromium
6 (VI) will occur by its deliberate, non-accidental participation in the importation, distribution, sale
7 and offering of the Products to consumers in California

8 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
9 Complaint.

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

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
16 relief:

17 A. That the court assess civil penalties against each defendant in the amount of \$2,500
18 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
19 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

20 B. That the court preliminarily and permanently enjoin Defendant mandating
21 Proposition 65 compliant warnings on the Products;

22 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
23 amount of \$50,000.00.

24 D. That the court grant any further relief as may be just and proper.

25 Dated: May 18, 2021

BRODSKY SMITH

26 By: 

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