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1	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113)		
2	BRODSKY SMITH		
3 4	9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160	ELECTRONICALLY FILED Superior Court of California, County of San Francisco	
5	Attorneys for Plaintiff	04/13/2021 Clerk of the Court BY: KALENE APOLONIO	
6		Deputy Clerk	
7 8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	COUNTY OF SAN FRANCISCO		
10	GABRIEL ESPINOZA,	Case No.: CGC-21-590972	
10	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF	
12	VS.	(Violation of Health & Safety Code § 25249.5 et	
12	WELLS LAMONT, LLC,	seq.)	
14	Defendant.		
15			
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. 2. This complaint is a representative action brought by Plaintiff in the public interest 		
25			
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 (he	exavalent compounds) ("chromium (VI)"), a toxic	
28	chemical found in leather gloves, including bu	ut not limited to Wells Lamont heavy duty cowhide	
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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF – VIOLATION OF HEALTH & SAFETY CODE §25249.5

gloves, UPC #053300113215, sold and/or distributed by defendant Wells Lamont, LLC ("Wells
 Lamont" 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.

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

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

6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
without a requisite exposure warning, leather gloves, including but not limited to Wells Lamont
heavy duty cowhide gloves, UPC #053300113215 (the "Products") that expose persons to
chromium (VI).

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

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

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

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10.

Plaintiff further seeks a reasonable award of attorney's fees and costs.

PARTIES

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

13 12. Defendant Wells Lamont, through its business, effectively imports, distributes,
14 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
15 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

16 13. Plaintiff alleges that defendant Wells Lamont is a "person" in the course of doing
17 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

18

VENUE AND JURISDICTION

19 14. Venue is proper in the County of San Francisco because one or more of the
20 instances of wrongful conduct occurred, and continue to occur in this county and/or because
21 Defendant conducted, and continues to conduct, business in the County of San Francisco with
22 respect to the Products.

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

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16. 1 This Court has jurisdiction over Defendant because defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered 2 3 with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or has otherwise purposefully availed itself of the California market. Such 4 5 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and 6 permissible with traditional notions of fair play and substantial justice.

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STATUTORY BACKGROUND

8 17. The people of the State of California declared in Proposition 65 their right "[t]o be 9 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive 10 harm." (Section 1(b) of Initiative Measure, Proposition 65.)

11 18. To effect this goal, Proposition 65 requires that individuals be provided with a 12 "clear and reasonable warning" before being exposed to substances listed by the State of California 13 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

No 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...

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

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

A warning that appears on a product's label or other labeling. a.

¹ Alternatively, a person in the course of doing business may elect to comply with the warning 27 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. 28

b. Identification of the product at the retail outlet in a manner which providesa warning. Identification may be through shelf labeling, signs, menus, or a combinationthereof.

c. The warnings provided pursuant to subparagraphs (a) and (b) shall be prominently placed upon a product's labels or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

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

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

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FACTUAL BACKGROUND

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

25 23. The consumer exposures that are the subject of this Complaint result from through
26 dermal absorption. Increased duration of contact with the Products, natural aging of the Products,
27 temperature, light exposure, and contact of the Products with oxidizing agents and alkaline
28 solutions will result in increased conversion of chromium (III) to chromium (VI) in the Products

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

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.

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

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SATISFACTION OF NOTICE REQUIREMNTS

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.

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

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

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FIRST CAUSE OF ACTION

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

9 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of
10 this Complaint as though fully set forth herein.

11 32. Defendant has, at all times mentioned herein, acted as distributer, and/or retailer of
12 the Products.

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

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

16 35. Plaintiff, based on his best information and belief, avers that at all relevant times
17 herein, and at least since August 3, 2020, continuing until the present, that Defendant has continued
18 to knowingly and intentionally expose California users and consumers of the Products to
19 chromium (VI) without providing required warnings under Proposition 65.

20 36. The exposures that are the subject of the Notice result 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 Products, natural aging of the Products, temperature, light exposure, and contact of the Products 24 with oxidizing agents and alkaline solutions will result in increased conversion of chromium (III) 25 to 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) during use are 27 possible additional chromium (VI) exposure routes.

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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: April 12, 2021 BRODSKY SMITH	
26	By:	
27	Evan J. Smith (SBN242352) Ryan P. Cardona (SBN302113)	
28	9595 Wilshire Boulevard, Suite 900	
	<u>- 8 -</u> COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF – VIOLATION OF HEALTH & SAFETY CODE §25249.5	

