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ENDORSED
FILED
ALAMEDA COUNTY

JUL 02 2021

CLERK OF THE SUPERIOR COURT

Esther Coleman

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 L.L. BEAN, INC.,

Defendant.

Case No.:

RG21103603

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to chromium (hexavalent compounds) ("chromium (VI)"), a toxic
27 chemical found in leather gloves, including but not limited to Uplander Pro Hunting Gloves and
28

1 L.L. Bean Utility Gloves, sold and/or distributed by defendant L.L. Bean, Inc (“L.L. Bean” or the
2 “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 Uplander Pro
23 Hunting Gloves and L.L. Bean Utility Gloves (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 injunction and civil penalties described herein.

1 touching of the user's hand to mouth. No clear and reasonable warning is provided with the
2 Products regarding the health hazards of exposure to the Listed Chemical.

3 24. Defendant has manufactured, processed, marketed, distributed, offered to sell
4 and/or sold the Products in California since at least February 15, 2021. The Products continue to
5 be distributed and sold in California without the requisite warning information.

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

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

15 **SATISFACTION OF NOTICE REQUIREMENTS**

16 27. On February 15, 2021, Plaintiff gave notice of alleged violation of Health and
17 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens
18 to chromium (VI) contained in the Products without proper warning, subject to a private action to
19 Defendant and to the California Attorney General's office and the offices of the County District
20 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
21 the herein violations allegedly occurred.

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

27 29. After receiving the Notice, and to Plaintiff's best information and belief, none of
28 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a

1 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
2 the subject of the Notice.

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

5 **FIRST CAUSE OF ACTION**

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

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

9 32. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
10 the Products.

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

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

14 35. Plaintiff, based on his best information and belief, avers that at all relevant times
15 herein, and at least since February 15, 2021, continuing until the present, that Defendant has
16 continued to knowingly and intentionally expose California users and consumers of the Products
17 to chromium (VI) without providing required warnings under Proposition 65.

18 36. The exposures that are the subject of the Notice result from the purchase,
19 acquisition, handling and recommended use of the Products. The primary route of exposure to the
20 Listed Chemical is through dermal absorption directly through the skin when consumers use,
21 touch, or handle the Products. Some amount of exposure through ingestion can occur by touching
22 the Products with subsequent touching of the user's hand to mouth. No clear and reasonable
23 warning is provided with the Products regarding the health hazards of exposure to the Listed
24 Chemical.

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

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

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

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
13 relief:

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

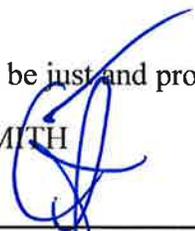
17 B. That the court preliminarily and permanently enjoin Defendant mandating
18 Proposition 65 compliant warnings on the Products;

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

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

22 Dated: May 27, 2021

BRODSKY SMITH

23 By:  _____

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