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4	Telephone: (877) 534-2590 Facsimile: (310) 247-0160	e: (877) 534-2590 :: (310) 247-0160 FILED Superior Court of California, County of San Francisco		
5	Attorneys for Plaintiff		12/08/2021	
6	SUPERIOR COURT OF 7	THE STATE OF CALIFORNIA	Clerk of the Court BY: LAURA SIMMONS Deputy Clerk	
7	COUNTY OF SAN FRANCISCO			
8		Case No.:		
9	ANTHONY FERREIRO,	COMPLAINT FOR CIVIL P	CGC-21-597019	
10	Plaintiff,	INJUNCTIVE RELIEF		
11	VS.	(Violation of Health & Safety seq.)	Code § 25249.5 et	
12	STANLEY BLACK & DECKER, INC.,			
13	Defendant.			
14				
15	Plaintiff Anthony Ferreiro ("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 di-isodecyl phthalate (DIDP), a toxic chemical found in Proto brand			
27	hand tools with plastic dipped handles sold and/or distributed by defendant Stanley Black &			
28	Decker, Inc. dba Stanley-Proto Industrial Tools, Inc. ("Stanley" or the "Defendant") in California.			
	COMPLAINT FOR CIVIL PENALTIES A HEALTH & SAF	<u>- 1 -</u> ND INJUNCTIVE RELIEF – VI TETY CODE §25249.5	IOLATION OF	

3. DIDP is a harmful chemical known to the State of California to cause reproductive
 toxicity. On April 20, 2007, the State of California listed DIDP as a chemical known to the State
 to cause reproductive toxicity and it has come under the purview of Proposition 65 regulations
 since that time. Cal. Code Regs. Tit. 27, § 25805(b); Health & Safety Code §§ 25249.8 &
 25249.10(b).

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.

Plaintiff alleges that Defendant distributes and/or offers for sale in California,
without a requisite exposure warning, Proto brand hand tools with plastic dipped handles (the
"Products") that expose persons to DIDP when used as intended and/or for its intended purpose.

7. Defendant's failure to warn consumers and other individuals in California of the
health hazards associated with exposure to DIDP from use of the Products 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.

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

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dangers and health hazards associated with exposure to DIDP 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

5 11. Plaintiff is a citizen of the State of California acting in the interest of the general 6 public to promote awareness of exposures to toxic chemicals in products sold in California and to 7 improve human health by reducing hazardous substances contained in such items. She brings this 8 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

9 12. Defendant Stanley, through its business, effectively imports, distributes, sells,
10 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that
11 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

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

VENUE AND JURISDICTION

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

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

16. 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
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

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

STATUTORY BACKGROUND

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

7 18. 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:

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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...

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

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

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.

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.

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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.

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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.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

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FACTUAL BACKGROUND

15 22. On January 1, 1988, the State of California listed DIDP as a chemical known to the
16 State to cause cancer and it has come under the purview of Proposition 65 regulations since that
17 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On
18 October 24, 2003, the State of California listed DIDP as a chemical known to cause reproductive
19 toxicity. In summary, the DIDP was listed under Proposition 65 as a chemical known to the State
20 to cause reproductive toxicity.

21 23. The consumer exposures that are the subject of this Complaint result from through 22 dermal absorption. The primary route of exposure to DIDP is through dermal absorption directly 23 through the skin when consumers use, touch, or handle the Products. Some amount of exposure 24 through ingestion can occur by touching the Products with subsequent touching of the user's hand 25 to mouth. No clear and reasonable warning is provided with the Products regarding the health 26 hazards of exposure to DIDP.

27 28 24. Defendant has manufactured, processed, marketed, distributed, offered to sell
 and/or sold the Products in California since at least July 26, 2021. The Products continue to be
 distributed and sold in California without the requisite warning information.

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

7 26. As a proximate result of acts by Defendant, as a person in the course of doing 8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of 9 California, including in San Francisco County, have been exposed to DIDP without a clear and 10 reasonable warning on the Products. The individuals subject to the violative exposures include 11 normal and foreseeable users and consumers that use the Products, as well as all others exposed to 12 the Products.

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SATISFACTION OF NOTICE REQUIREMNTS

14 27. On July 26, 2021, Plaintiff gave notice of alleged violation of Health and Safety
15 Code § 25249.6 (the "Notice") to Stanley-Proto Industrial Tools, Inc. concerning the exposure of
16 California citizens to DIDP from use of the Products without proper warning, subject to a private
17 action to Defendant and to the California Attorney General's office and the offices of the County
18 District attorneys and City Attorneys for each city with a population greater than 750,000 persons
19 wherein the herein violations allegedly occurred.

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

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

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30. 1 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 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of this Complaint as though fully set forth herein. 6 7 32. Defendant has, at all times mentioned herein, acted as distributer, and/or retailer of the Product. 8

9 33. The Products contain DIDP, a hazardous chemical found on the Proposition 65 list
10 of chemicals known to be hazardous to human health.

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34. The Product does not comply with the Proposition 65 warning requirements.

35. Plaintiff, based on his best information and belief, avers that at all relevant times
herein, and at least since July 26, 2021, continuing until the present, that Defendant has continued
to knowingly and intentionally expose California users and consumers of the Product to DIDP
without providing required warnings under Proposition 65.

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

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

38. Defendant has knowledge that the normal and reasonably foreseeable use of the
Products exposes individuals to DIDP, and Defendant intends that exposures to DIDP will occur
by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
the Products to consumers in California

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1	39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this		
2	Complaint.		
3	40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above		
4	described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.		
5	41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically		
6	authorized to grant injunctive relief in favor of Plaintiff and against Defendant.		
7	PRAYER FOR RELIEF		
8	WHEREFORE, Plaintiff demands judgment against Defendant and requests the following		
9	relief:		
10	A. That the court assess civil penalties against each Defendant in the amount of \$2,500		
11	per day for each violation for up to 365 days (up to a maximum civil penalty amount per		
12	violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);		
13	B. That the court preliminarily and permanently enjoin Defendant mandating		
14	Proposition 65 compliant warnings on the Products;		
15	C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the		
16	amount of \$50,000.00.		
17	D. That the court grant any further relief as may be just and proper.		
18	Dated: December 8, 2021 BRODSKY & SMITH		
19	By: Efe		
20	Evan J. Smith (SBN242352) Ryan P. Cardona (SBN302113)		
21	9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212		
22	Telephone: (877) 534-2590		
23	Facsimile: (310) 247-0160		
24	Attorneys for Plaintiff		
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