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Superior Court of California,
County of San Francisco

10/16/2023
Clerk of the Court
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Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 GABRIEL ESPINOZA,

13 Plaintiff,

14 vs.

15 TONAL MUSIC, INC., GUITAR
16 CENTER, INC.,

17 Defendants.

Case No.:

CGC-23-609766

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

18 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following
19 cause of action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest
28 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 (hexavalent compounds) (“chromium (VI)”), a toxic
chemical found in *Franklin*® leather guitar straps, UPC# 069593017130, sold and/or distributed

1 by defendants Tonal Music, Inc. (“Tonal”) and/or Guitar Center, Inc. (“Guitar Center”)
2 (collectively, “Defendants” and each a “Defendant”) in California.

3 3. Chromium (VI) is a harmful chemical known to the State of California to cause
4 cancer and birth defects or other reproductive harm. On February 27, 1987, the State of California
5 listed chromium (VI) as a chemical known to the State to cause cancer and it has come under the
6 purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health
7 & Safety Code §§ 25249.8 & 25249.10(b). On December 19, 2008, the State of California listed
8 chromium (VI) as a chemical known to cause birth defects or other reproductive harm.

9 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
10 within California or sell products therein to comply with Proposition 65 regulations. Included in
11 such regulations is the requirement that businesses must label any product containing a Proposition
12 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
13 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
14 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 Defendants distribute and/or offer for sale in California,
22 without a requisite exposure warning, *Franklin*® leather guitar straps, UPC# 069593017130, (the
23 “Products”) that expose persons to chromium (VI) when used for their intended purpose.

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

28

1 known to cause birth defects or other reproductive harm. In summary, chromium (VI) was listed
2 under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other
3 reproductive harm.

4 23. The exposures that are the subject of the Notice result from the purchase,
5 acquisition, handling and recommended use of the Products. Increased duration of contact with the
6 Products, natural aging of the Products, temperature, light exposure, and contact of the Products
7 with oxidizing agents and alkaline solutions will result in increased conversion of chromium (III)
8 to chromium (VI) in the Products and thus increased dermal exposure to chromium (VI). Direct
9 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) will occur by
10 touching the Products with subsequent touching of the user's hand to mouth.

11 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
12 and/or sold the Products in California since at least October 27, 2022. The Products continue to be
13 distributed and sold in California without the requisite warning information.

14 25. At all times relevant to this action, Defendants have knowingly and intentionally
15 exposed users, consumers and/or patients to the Products and the chromium (VI) without first
16 giving a clear and reasonable exposure warning to such individuals.

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

23 SATISFACTION OF NOTICE REQUIREMENTS

24 27. Plaintiff purchased the Product from Guitar Center. At the time of purchase,
25 Defendants did not provide a Proposition 65 exposure warning for chromium (VI) or any other
26 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
27 *supra*.

1 28. The Product was sent to a testing laboratory to determine the chromium (VI)
2 content of the Product.

3 29. On October 21, 2022, the laboratory provided the results of its analysis. Results of
4 this test determined the Product exposes users to chromium (VI) (the “Chemical Test Report”).

5 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
6 to determine if, based on the findings of the Chemical Test Report and the reasonable and
7 foreseeable use of the Product, exposure to chromium (VI) will occur at levels that require
8 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
9 the California Code of Regulations.

10 31. On October 27, 2022, Plaintiff received from the analytical chemist an exposure
11 assessment report which concluded that persons in California who use the Products will be exposed
12 to levels of chromium (VI) that require a Proposition 65 exposure warning.

13 32. On October 27, 2022, Plaintiff gave notice of alleged violation of Health and Safety
14 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
15 chromium (VI) contained in the Products without proper warning, subject to a private action to
16 Defendants and to the California Attorney General’s office and the offices of the County District
17 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
18 the herein violations allegedly occurred.

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

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

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

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

7 45. 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 46. 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 Defendants.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff demands judgment against Defendants 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 Defendants 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: October 16, 2023

BRODSKY SMITH

23 By:  _____

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