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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

04/16/2024
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-24-613988

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 WALMART, INC.,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

16 Plaintiff Anthony Ferreiro (“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 (a) Moosejaw softshell gloves, RN # 118940 and (b) Quietwear leather gloves,

1 UPC # 033977556027 sold and/or distributed by defendant Walmart, Inc. (“Walmart” or
2 “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 Defendant distributes and/or offers for sale in California,
22 without a requisite exposure warning, (a) Moosejaw softshell gloves, RN # 118940 and (b)
23 Quietwear leather gloves, UPC # 033977556027 (collectively, the “Products” and each a
24 “Product”) that expose persons to chromium (VI) when used for their intended purpose.

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

2 b. Identification of the product at the retail outlet in a manner which provides
3 a warning. Identification may be through shelf labeling, signs, menus, or a combination
4 thereof.

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

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

12 20. Proposition 65 provides that any "person who violates or threatens to violate" the
13 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
14 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
15 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
16 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
17 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

18 **FACTUAL BACKGROUND**

19 21. On February 27, 1987, the State of California listed chromium (VI) as a chemical
20 known to the State to cause cancer and it has come under the purview of Proposition 65 regulations
21 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). On December 19, 2008, the State of California listed chromium (VI) as a chemical
23 known to cause birth defects or other reproductive harm. In summary, chromium (VI) was listed
24 under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other
25 reproductive harm.

26 22. The exposures that are the subject of the Notice result from the purchase,
27 acquisition, handling and recommended use of the Products. Increased duration of contact with the
28 Products, natural aging of the Products, temperature, light exposure, and contact of the Products

1 with oxidizing agents and alkaline solutions will result in increased conversion of chromium (III)
2 to chromium (VI) in the Products and thus increased dermal exposure to chromium (VI). Direct
3 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) will occur by
4 touching the Products with subsequent touching of the user's hand to mouth.

5 23. Defendants have manufactured, processed, marketed, distributed, offered to sell
6 and/or sold the Products in California since at least May 9, 2023. The Products continue to be
7 distributed and sold in California without the requisite warning information.

8 24. At all times relevant to this action, Defendant has knowingly and intentionally
9 exposed users, consumers and/or patients to the Products and the chromium (VI) without first
10 giving a clear and reasonable exposure warning to such individuals.

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

17 **SATISFACTION OF NOTICE REQUIREMENTS**

18 26. Plaintiff purchased the Products from Walmart. At the time of purchase, Defendant
19 did not provide a Proposition 65 exposure warning for chromium (VI) or any other Proposition 65
20 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

21 27. On April 19, 2023, the Products were sent to a testing laboratory to determine the
22 chromium (VI) content of the Products.

23 28. On April 28, 2023, the laboratory provided the results of its analysis. Results of
24 these tests determined the Products exposes users to chromium (VI) (collectively, the "Chemical
25 Test Reports" and each a "Chemical Test Report").

26 29. Plaintiff provided the Chemical Test Reports and Products to an analytical chemist
27 to determine if, based on the findings of the Chemical Test Reports and the reasonable and
28 foreseeable use of the Products, exposure to chromium (VI) will occur at levels that require

1 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
2 the California Code of Regulations.

3 30. On May 9, 2023, Plaintiff received from the analytical chemist an exposure
4 assessment report which concluded that persons in California who use the Products will be exposed
5 to levels of chromium (VI) that require a Proposition 65 exposure warning.

6 31. On May 9, 2023, Plaintiff gave notice of alleged violation of Health and Safety
7 Code § 25249.6 (collectively, the “Notices” and each a “Notice”) to Defendant concerning the
8 exposure of California citizens to chromium (VI) contained in the Products without proper
9 warning, subject to a private action to Defendant and to the California Attorney General’s office
10 and the offices of the County District attorneys and City Attorneys for each city with a population
11 greater than 750,000 persons wherein the herein violations allegedly occurred. See attached at
12 Exhibits “A” – “B” a true and correct copy of each Notice.

13 32. The Notices complied with all procedural requirements of Proposition 65 including
14 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
15 least one person with relevant and appropriate expertise who reviewed relevant data regarding
16 chromium (VI) exposure, and that counsel believed there was meritorious and reasonable cause
17 for a private action.

18 33. After receiving the Notices, and to Plaintiff’s best information and belief, none of
19 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
20 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
21 the subject of the Notices.

22 34. Plaintiff is commencing this action more than sixty (60) days from the date of the
23 each Notice to Defendant, as required by law.

24 **FIRST CAUSE OF ACTION**

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

26 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of
27 this Complaint as though fully set forth herein.

1 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
2 the Products.

3 37. Use of the Products will expose users and consumers thereof to chromium (VI), a
4 hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human
5 health.

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

7 39. Plaintiff, based on his best information and belief, avers that at all relevant times
8 herein, and at least since May 9, 2023, continuing until the present, that Defendant has continued
9 to knowingly and intentionally expose California users and consumers of the Products to
10 chromium (VI) without providing required warnings under Proposition 65.

11 40. The exposures that are the subject of the Notices result from the purchase,
12 acquisition, handling and recommended use of the Products. Consequently, the primary route of
13 exposure to these chemicals is through dermal exposure. Increased duration of contact with the
14 Products, natural aging of the Products, temperature, light exposure, and contact of the Products
15 with oxidizing agents and alkaline solutions will result in increased conversion of chromium (III)
16 to chromium (VI) in the Products and thus increased dermal exposure to chromium (VI). Direct
17 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) will occur by
18 touching the Products with subsequent touching of the user's hand to mouth.

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

22 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
23 Product exposes individuals to chromium (VI), and Defendant intends those exposures to
24 chromium (VI) will occur by its deliberate, non-accidental participation in the importation,
25 distribution, sale and offering of the Products to consumers in California

26 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
27 Complaint.
28

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
7 relief:

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

11 B. That the court preliminarily and permanently enjoin Defendants mandating
12 Proposition 65 compliant warnings on the Products;

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

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

16 Dated: April 16, 2024

BRODSKY SMITH

17 By: 

18 Evan J. Smith (SBN242352)

19 Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

20 Telephone: (877) 534-2590

21 Facsimile: (310) 247-0160

22 *Attorneys for Plaintiff*

EXHIBIT “A”

LAW OFFICES
BRODSKY & SMITH

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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

May 9, 2023

| | |
|--|---|
| Member/Manager New Moosejaw, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808 | Member/Manager New Moosejaw, LLC c/o CT Corporation System 208 So. LaSalle Street, Suite 814 Chicago, IL 60604 |
| Member/Manager New Moosejaw, LLC 850 Cherry Ave. San Bruno, CA 94066 | Member/Manager New Moosejaw, LLC c/o The Corporation Company 40600 Ann Arbor Rd. E., Ste. 201 Plymouth, MI 48170 |
| President/CEO Moosejaw Mountaineering and Backcountry Travel 650 Mandoline, Madison Heights, MI 48071 | President/CEO Outdoor Lifestyle Holdings, Inc. c/o The Corporation Company 40600 Ann Arbor Rd. E., Ste. 201 Plymouth, MI 48170 |
| Member/Manager Walmart Apollo, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801 | President/CEO Walmart, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801 |

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Anthony Ferreiro ("Ferreiro"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Ferreiro has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

California. Health & Safety Code § 25249.6 provides that “[n]o 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 providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Anthony Ferreiro, 10833 Wilshire Blvd., Apt. 606, Los Angeles, CA 90024, (Ph) 267-438-3403.
2. **Alleged Violator(s):** New Moosejaw, LLC; Moosejaw Mountaineering and Backcountry Travel; Outdoor Lifestyle Holdings, Inc.; Walmart, Inc.; Walmart Apollo, LLC
3. **Time Period of Exposure:** Violations have been occurring since at least May 9, 2023 and are continuing to this day.
4. **Listed Chemical:** Chromium (VI). Chromium (VI) is listed under Proposition 65 as a chemical known to the State to cause reproductive toxicity and cancer.
5. **Product:**

| Product ² | Non- Exclusive Examples of the Product |
|----------------------|--|
| Glove | Moosejaw Softshell Glove RN# 118940 |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical 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 Product 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 Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

² The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Ferreiro’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Ferreiro against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Ferreiro is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Ferreiro has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “B”

LAW OFFICES
BRODSKY & SMITH

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MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

May 9, 2023

| | |
|--|---|
| President/CEO Reliable Knitting Works c/o Reckmeyer Law, LLC 4701 N. Port Washington Road, Suite 200 Milwaukee, WI 53212-1050 | President/CO Reliable Knitting Works 6737 W. Washington Street., Suite 3200 Milwaukee, WI 53214-5651 |
| President/CEO/Owner Reliable of Milwaukee PO Box 563 Milwaukee, WI 53201-0563 | President/CEO Walmart, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801 |
| Member/Manager Walmart Apollo, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801 | |

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Anthony Ferreiro ("Ferreiro"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Ferreiro has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o 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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Anthony Ferreiro, 10833 Wilshire Blvd., Apt. 606, Los Angeles, CA 90024, (Ph) 267-438-3403.
2. **Alleged Violator(s):** Reliable Knitting Works; Reliable of Milwaukee; Walmart, Inc.; Walmart Apollo, LLC
3. **Time Period of Exposure:** Violations have been occurring since at least May 9, 2023 and are continuing to this day.
4. **Listed Chemical:** Chromium (VI). Chromium (VI) is listed under Proposition 65 as a chemical known to the State to cause reproductive toxicity and cancer.
5. **Product:**

| Product² | Non- Exclusive Examples of the Product |
|----------------------------|---|
| Glove | Quietwear Leather Glove UPC# 033977556027 |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical 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 Product 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 Listed Chemical.

II. PROPOSITION 65 INFORMATION

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² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Ferreiro's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Ferreiro is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Ferreiro has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary