

ENDORSED
FILED
ALAMEDA COUNTY

AUG 18 2015

CLERK OF THE SUPERIOR COURT
By CIGON JOHNSON Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
12 Plaintiff,
13 vs.
14 TSA STORES, INC., and SMITH
15 VENTURES, LTD.,
16 Defendants.

CASE NO.: RG15782469

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

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18
19 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
20 alleges the following cause of action in the public interest of the citizens of the State of
21 California.

22 **BACKGROUND OF THE CASE**

23 I. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
25 at the Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), which reads, in relevant part,
26 "no person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 giving clear and reasonable warning to such individual ..." Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposures to Diisononyl phthalate (“DINP”) and/or Di-isodecyl phthalate
4 (“DIDP”), toxic chemicals found in the R2 Training Rope, UPC No. 8 18905 01034 1 (the
5 “Product”) that is manufactured, sold, and/or distributed by defendants TSA Stores, Inc. t/a
6 Sports Authority (“Sports Authority”) and/or Smith Ventures, Ltd. t/a Rage Fitness Supply
7 (“Rage Fitness”) (collectively referred to herein as, “Defendants”) in California.

8 3. DINP is a harmful chemical known to the State of California to cause cancer. On
9 December 20, 2013, the State of California listed DINP as a chemical known to cause cancer and
10 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
11 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

12 4. DIDP is a harmful chemical, known to cause reproductive toxicity. On April 20,
13 2007, the State of California listed DIDP as a chemical known to the state of cause reproductive
14 toxicity and it has come under the purview of Proposition 65 regulations since that time. Cal.
15 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

16 5. Proposition 65 requires all businesses with ten (10) or more employees that
17 operate within California or sell Product therein to comply with Proposition 65 regulations.
18 Included in such regulations is the requirement that businesses must label any Proposition 65
19 listed chemical with a “clear and reasonable” warning before knowingly or intentionally
20 exposing it to any person.

21 6. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
22 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
23 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
24 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
25 Code § 25249.7.

26 7. Plaintiff alleges that Defendants distribute, manufacture, produce, import, sell,
27 and/or offer for sale in California the Product without the required warning that the Product
28 exposes users, purchasers, workers and other individuals to the chemicals DINP and DIDP.

1 Denver, CO 80239. Rage Fitness is a person in the course of doing business within the meaning
2 of Health & Safety Code sections 25249.6 and 25249.11.

3 14. Upon information and belief, Plaintiff avers that each Defendant acted as an
4 employee, servant, or agent of each other Defendant at all times relevant to this action. Plaintiff
5 further avers that in conducting the activities alleged in this Complaint, all Defendants acted
6 within the scope of their agency or similarly situated relationship as toward one another.
7 Therefore all Defendants acted with consent, permission, and authorization of each other in
8 relation to all acts related to the scope of this Complaint.

9 15. Upon information and belief, Plaintiff avers that at all relevant times herein, each
10 Defendant was a person doing business within the meaning of Health and Safety Code §
11 25249.11(b) and that each and every Defendant had ten (10) or more employees at all relevant
12 times.

13 VENUE AND JURISDICTION

14 16. Venue is proper in the County of Alameda, because one or more of the instances
15 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
16 conducted, and continue to conduct, business in the County of Alameda with respect to the
17 Product.

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

23 18. This Court has jurisdiction over Defendants as each Defendant either is a citizen
24 of the State of California, has sufficient minimum contacts with the State of California, is
25 registered with the California Secretary of State as foreign corporations authorized to do business
26 in the State of California, and/or have otherwise purposefully availed themselves of the
27 California market. Such purposeful availment has rendered the exercise of jurisdiction by
28

1 California courts consistent and permissible with traditional notions of fair play and substantial
2 justice.

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 19. On May 26, 2015, Plaintiff gave notice of alleged violations of Health and Safety
5 Code § 25249.6, concerning the exposure of California citizens to DINP and DIDP without
6 proper warning, subject to a private action to the Defendants and to the California Attorney
7 General's office and the offices of the County District attorneys and City Attorneys for each city
8 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

9 20. Such notice complied with all procedural requirements of Proposition 65
10 including the attachment of a Certificates of Merit affirming that Plaintiff's counsel had
11 consulted with at least one person with relevant and appropriate expertise who reviewed relevant
12 data regarding DINP and DIDP exposure, and that counsel believed there was meritorious and
13 reasonable cause for a private action.

14 21. After receiving Plaintiff's notices, and to Plaintiff's best information and belief,
15 none of the noticed appropriate public enforcement agencies have commenced and diligently
16 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
17 violations which are the subject of Plaintiff's notice of violation.

18 22. Plaintiff is commencing this action more than sixty (60) days from the date of his
19 notice to Defendants, as required by law.

20 **FIRST CAUSE OF ACTION**

21 **(By Plaintiff against all Defendants for the Violation of Proposition 65)**

22 23. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 22 of
23 this complaint as though fully set forth herein.

24 24. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
25 and/or retailer of the Product.

26 25. The Product contains DINP and DIDP, hazardous chemicals found on the
27 Proposition 65 list of a chemical known to be hazardous to human health.

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

1 27. Plaintiff, based on his best information and belief, avers that at all relevant times
2 hereto, and at least since April 27, 2015 continuing until the present, that Defendants have
3 continued to knowingly and intentionally expose California users and consumers of the Product
4 to DINP and DIDP without providing required warnings under Proposition 65.

5 28. The exposures that are the subject of this notice result from the purchase,
6 acquisition, handling and recommended use of the product. Consequently, the primary route of
7 exposure to these chemicals is through dermal exposure. Dermal exposure to DINP and DIDP
8 through the user's hands is likely to occur when the user adjusts the length of the training rope
9 and uses the training rope for exercise. Dermal exposure is also possible should the training rope
10 come into contact with the user's exposed skin during exercise. Should the user perspire during
11 exercise, skin permeation rates can potentially increase as aqueous HMWP skin permeation rates
12 are faster than neat HMWP permeation. Finally, while mouthing of the product does not seem
13 likely, some amount of exposure through ingestion can occur by handling the product with
14 subsequent touching of the users hand to mouth.

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

18 30. Defendants have knowledge that the normal and reasonably foreseeable use of the
19 Product expose individuals to DINP and DIDP, and Defendants intend that exposures to DINP
20 and DIDP will occur by their deliberate, non-accidental participation in the manufacture,
21 importation, distribution, sale and offering of the Product to consumers in California

22 31. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
23 Complaint without success.

24 32. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
25 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per
26 violation.

27 33. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
28 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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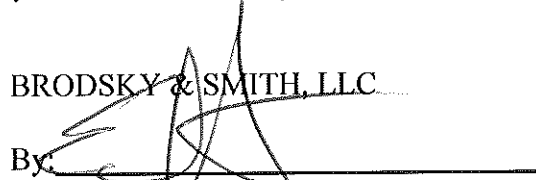
PRAYER FOR RELIEF

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

- A. That the court assess civil penalties against each and every Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin all Defendants mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: August 18, 2015

BRODSKY & SMITH, LLC

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