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ALAMEDA COUNTY

JAN 17 2017

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA

13 ANTHONY FERREIRO,  
14 Plaintiff,

15 v.

16 THE SURPLUS STORE,  
17 Defendant.

Case No.:

RG17845857

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

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

20 **BACKGROUND OF THE CASE**

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

**BY FAX**

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 exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
4 sniper gloves and safety goggles sold, distributed and/or purchased for sale by defendant The  
5 Surplus Store (“The Surplus Store” or “Defendant”) in California.

6           3.       DEHP is a harmful chemical known to the State of California to cause cancer and  
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
8 known to the State to cause cancer and it has come under the purview of Proposition 65  
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
11 known to cause reproductive toxicity.

12           4.       Proposition 65 requires all businesses with ten (10) or more employees that  
13 operate within California or sell products therein to comply with Proposition 65 regulations.  
14 Included in such regulations is the requirement that businesses must label any product containing  
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and  
16 intentionally” exposing any person to it.

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

22           6.       Plaintiff alleges that Defendant purchases for sale, distributes, imports, sells,  
23 and/or offers for sale in California, without the required warning, sniper gloves and safety  
24 goggles, including but not limited to (1) *Rapdom* sniper gloves UPC No. 847418019176, and (2)  
25 *Hawk* safety goggles (the “Products”) that contain DEHP.

26           7.       Defendant’s failure to warn consumers and other individuals in California of the  
27 health hazards associated with exposure to DEHP in conjunction with the sale, and/or  
28

1 distribution of the Products is a violation of Proposition 65 and subjects Defendant to the  
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
6 Defendant to provide purchasers or users of the Product with the required warnings related to the  
7 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety  
8 Code § 25249.7(a).

9 **PARTIES**

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

14 11. Defendant The Surplus Store, a California Corporation, purchase for sale,  
15 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or  
16 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
17 Products for sale or use in the State of California.

18 12. Defendant The Surplus Store is a “person” in the course of doing business within  
19 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

20 **VENUE AND JURISDICTION**

21 13. Venue is proper in the County of Alameda because one or more of the instances  
22 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
23 conducted, and continues to conduct, business in the County of Alameda with respect to the  
24 Product.

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

3 15. This Court has jurisdiction over Defendant because it is either a citizen of the  
4 State of California, has sufficient minimum contacts with the State of California, is registered  
5 with the California Secretary of State as foreign corporations authorized to do business in the  
6 State of California, and/or has otherwise purposefully availed itself of the California market.  
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
8 consistent and permissible with traditional notions of fair play and substantial justice.

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On June 3, and on June 15, 2016, Plaintiff gave notice of alleged violation of  
11 Health and Safety Code § 25249.6 (collectively, the “Notices”) to The Surplus Store concerning  
12 the exposure of California citizens to DEHP contained in the Products without proper warning,  
13 subject to a private action to The Surplus Store and to the California Attorney General’s office  
14 and the offices of the County District attorneys and City Attorneys for each city with a  
15 population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

21 18. After receiving the Notices, and to Plaintiff’s best information and belief, none of  
22 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
23 a cause of action against The Surplus Store under Proposition 65 to enforce the alleged violations  
24 which are the subject of Plaintiff’s notice of violation.

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
26 Notices to The Surplus Store, as required by law.

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1 **FIRST CAUSE OF ACTION**

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

3 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of  
4 this complaint as though fully set forth herein.

5 21. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer  
6 of the Products.

7 22. The Products contain DEHP, a hazardous chemical found on the Proposition 65  
8 list of chemicals known to be hazardous to human health.

9 23. The Products do not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on his best information and belief, avers that at all relevant times  
11 herein, and at least since April 26, 2016 continuing until the present, that The Surplus Store has  
12 continued to knowingly and intentionally expose California users and consumers of the Products  
13 to DEHP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notices result from the purchase,  
15 acquisition, handling and recommended use of the product. Consequently, the primary route of  
16 exposure to these chemicals in the sniper gloves is through dermal exposure. The potential exists  
17 for dermal exposure of DEHP through direct contact with the user's bare hands when the wrist  
18 strap is opened, closed, or manipulated or if the wrist strap comes into contact with the user's  
19 exposed skin during wearing the gloves. Should the wrist strap become wet, the user grasps the  
20 wrist strap with wet hands, or the wrist strap contact water/perspiration on the user's skin, skin  
21 permeation rates can potentially increase as aqueous DEHP skin permeation rates are faster than  
22 neat DEHP permeation. If the gloves are stored or transported in a carrier bag, DEHP that  
23 leaches from the glove wrist strap may contaminate other articles contained within the carrier  
24 bag that are subsequently handled by the user. Finally, while mouthing of the product does not  
25 seem likely, some amount of exposure through ingestion can occur by incidental touching the  
26 wrist strap to the user's mouth while wearing the gloves or by touching of the user's hand to  
27 mouth after the wrist strap has been handled.

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1           26.     The primary route of exposure to these chemicals in the safety goggles is through  
2 direct skin exposure. As the frame portion of these goggles is in direct contact with a user's  
3 head/face, direct skin exposure is likely to occur. If these goggles are used in situations where  
4 elevated environmental temperatures occur over ambient conditions exist (such as when using  
5 open flames and furnaces) this can lead to greater rates of DEHP leaching from the plastic.  
6 Should the wearer perspire underneath the goggles, skin permeation rates can potentially  
7 increase as aqueous DEHP skin permeation rates are faster than neat DEHP permeation. Not  
8 only is direct skin exposure likely, but vapor phase DEHP is likely to be generated within the  
9 enclosed area surrounding the wearer's eyes that may cause eye irritation. Systemic exposure is  
10 possible through exposure to phthalate vapors inside the enclosed area of the goggles resulting in  
11 intraocular absorption and transport to other parts of the body. The eyes are particularly  
12 sensitive to chemicals. For instance, decreased human corneal endothelial cell line B4G12  
13 proliferation was observed for DBP, BBP, and DEHP, and cell toxicity was observed for DBP  
14 and BBP. DEHP vapor potentially may be inhaled due to the proximity of the goggles to the  
15 nose and mouth of the wearer. Finally, while mouthing of the product does not seem likely,  
16 some amount of exposure through ingestion can occur by handling the product during use and  
17 removal with subsequent touching of the user's hand to mouth.

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

21           28.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
22 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will  
23 occur by their deliberate, non-accidental participation in the manufacture, importation,  
24 distribution, sale and offering of the Products to consumers in California

25           29.     Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
26 Complaint.

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

