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ENLORSED
FILED
ALAMEDA COUNTY

JAN 17 2017

CLERK OF THE SUPERIOR COURT
By *[Signature]*
JANA THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
12 Plaintiff,
13 v.
14 RAPID DOMINANCE CORP.,
15 Defendant.

Case No.: **RG17845842**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELEIF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

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

19 **BACKGROUND OF THE CASE**

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

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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 *Rapdom* sniper gloves sold and/or distributed by defendant Rapid Dominance Corporation
5 (“Rapid Dominance” 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 produces, manufactures, distributes, imports, sells,
23 and/or offers for sale in California, without the required warning, *Rapdom* sniper glove,
24 including but not limited to UPC No. 847418019176 (“Product” or “Products”) that contain
25 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, manufacture,
28

1 and/or distribution of the Product 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 Rapid Dominance, a California Corporation, effectively manufactures,
15 imports, distributes, sells, and/or offers the Product for sale or use in the State of California, or it
16 implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product
17 for sale or use in the State of California. Defendant Rapid Dominance maintains a registered
18 agent for service of process at c/o John Whang, 2121 S. Wilmington Avenue, Compton, CA
19 90220.

20 12. Defendant Rapid Dominance is a “person” in the course of doing business within
21 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

22 **VENUE AND JURISDICTION**

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

27 14. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

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

10 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

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

26 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
27 Notice to Rapid Dominance, 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 manufacturer, distributor,
6 and/or retailer of the Product.

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

9 23. The Product does 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 Rapid Dominance has
12 continued to knowingly and intentionally expose California users and consumers of the Product
13 to DEHP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of this notice result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals is through dermal exposure. The potential exists for dermal
17 exposure of DEHP through direct contact with the user's bare hands when the wrist strap is
18 opened, closed, or manipulated or if the wrist strap comes into contact with the user's exposed
19 skin during wearing the gloves. Should the wrist strap become wet, the user grasps the wrist
20 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. Plaintiff, based on his best information and belief, avers that such exposures will
2 continue every day until clear and reasonable warnings are provided to Product purchasers and
3 users or until this known toxic chemical is removed from the Product.

4 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
6 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
7 sale and offering of the Product to consumers in California

8 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
9 Complaint.

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

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


14 **PRAYER FOR RELIEF**

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

- 17 A. That the court assess civil penalties against Defendant in the amount of
18 \$2,500 per day for each violation in accordance with Health and Safety
19 Code § 25249.7(b);
20 B. That the court preliminarily and permanently enjoin Defendant mandating
21 Proposition 65 compliant warnings on the Product;
22 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
23 D. That the court grant any further relief as may be just and proper.

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25 Dated: January 17, 2017

BRODSKY & SMITH, LLC

26 By:  _____
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