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ENDORSED
FILED
ALAMEDA COUNTY

NOV 22 2017

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

DORSAZ, INC., HELMET VENTURE,
INC.,

Defendants.

Case No.:

RG17883452

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

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

BACKGROUND OF THE CASE

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part, "[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 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposure Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Xelement motorcycle bags manufactured, sold and/or distributed in California by defendants

1 Helmet Venture, Inc. d/b/a Leatherup.com (“Helmet Venture”) and Dorsaz, Inc. t/a Xelemen
2 (“Dorsaz”) (collectively, the “Defendants”) in California.

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

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

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

19 6. Plaintiff alleges that Defendants manufacture, distribute, import, sell, and/or offer
20 for sale in California, without the required Proposition 65 exposure warning, Xelement
21 motorsport bags (“Product” or “Products”), that contain DEHP.

22 7. Defendants’ failure to warn consumers and other individuals in California of the
23 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
24 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the
25 enjoinder and civil penalties described herein.

26 8. Plaintiff seeks civil penalties against Defendants for their violations of
27 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

28

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

PARTIES

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

11. Defendant Dorsaz effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California. Defendant Dorsaz is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

12. Defendant Helmet Venture effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California. Defendant Helmet Venture is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

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

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

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

8 **SATISFACTION OF NOTICE REQUIREMENTS**

9 16. On June 27, 2017, Plaintiff gave notice of alleged violation of Health and Safety
10 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
11 DEHP contained in the Product without proper warning, subject to a private action to Defendants
12 and to the California Attorney General's office and the offices of the County District attorneys
13 and City Attorneys for each city with a population greater than 750,000 persons wherein the
14 herein violations allegedly occurred.

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

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

24 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
25 Notice to Defendants, as required by law.

26 **FIRST CAUSE OF ACTION**

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

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

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

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

7 23. The Product does not comply with the Proposition 65 warning requirements.

8 24. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since May 16, 2017, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Product
11 to DEHP without providing required warnings under Proposition 65.

12 25. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the product. Consequently, the primary route of
14 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
15 DEHP by dermal absorption through direct skin contact with the black PVC during routine use
16 when the motorcycle bag is handled with bare hands. If the vinyl becomes wet or is handled
17 with wet hands, aqueous DEHP skin permeation rates have been reported to be faster than neat
18 DEHP permeation. The product can be expected to emit gas phase DEHP into the air and
19 accumulate DEHP at the surface over the lifetime of the product. DEHP that leaches from the
20 vinyl may contaminate items contained within the motorcycle bag that are subsequently handled,
21 worn in direct contact with skin, mouthed, or ingested by the user. Finally, while mouthing of
22 the product does not seem likely, some amount of exposure through ingestion can occur by
23 touching the product with subsequent touching of the user's hand to mouth.

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

27 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
28 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
2 sale and offering of the Product to consumers in California

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

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

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

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
12 following relief:

- 13 A. That the court assess civil penalties against Defendants in the amount of
14 \$2,500 per day for each violation in accordance with Health and Safety
15 Code § 25249.7(b);
16
17 B. That the court preliminarily and permanently enjoin Defendants
18 mandating Proposition 65 compliant warnings on the Product;
19
20 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
21
22 D. That the court grant any further relief as may be just and proper.

21 Dated: November 21, 2017

BRODSKY & SMITH, LLC

22 By: 

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