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ENDORSED
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
by _____
Deputy

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

11 GABRIEL ESPINOSA,
12 Plaintiff,

13 v.

14 SEATTLE SPORTS CO., INC.,
15 Defendant.

Case No.: *RG* 17881460

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

16 Plaintiff Gabriel Epsinosa ("Plaintiff"), by and through his attorneys, alleges the
17 following 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
21 at 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 Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in dry
28

1 bags that are manufactured, sold and/or distributed in California by defendant Seattle Sports
2 (“Seattle Sports” or “Defendant”) in California.

3 3. DEHP is a hazardous chemical listed on the Proposition 65 list of chemicals
4 known to be hazardous to human health. On December 20, 2013, the State of California listed
5 DEHP as a chemical known to the State to cause cancer and DEHP has come under the purview
6 of Proposition 65 regulations since its listing. Cal. Code Regs. Tit. 27, § 27001(c); Health &
7 Safety Code §§ 25249.8 & 25249.10(b).

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

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

18 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
19 and/or offers for sale in California dry bags (“Product” or “Products”), without requisite
20 Proposition 65 exposure warning labels that the Products contain DEHP.

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

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

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or users of the Product with the required warnings related to the

1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
2 Code § 25249.7(a).

3 **PARTIES**

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

8 11. Defendant Seattle Sports, through its business, effectively manufactures, imports,
9 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
10 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale
11 or use in the State of California.

12 12. Defendant Seattle Sports is a “person” in the course of doing business within the
13 meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

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

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

24 15. This Court has jurisdiction over Defendant because it is either a citizen of the
25 State of California, has sufficient minimum contacts with the State of California, is registered
26 with the California Secretary of State as foreign corporations authorized to do business in the
27 State of California, and/or has otherwise purposefully availed itself of the California market.

28

1 Such purposeful availment has rendered the exercise of jurisdiction by California courts
2 consistent and permissible with traditional notions of fair play and substantial justice.

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 16. On July 19, 2017, Plaintiff gave notice of alleged violation of Health and Safety
5 Code § 25249.6 (the “Notice”) to Seattle Sports concerning the exposure of California citizens to
6 DEHP contained in the Products without proper Proposition 65 exposure warning, subject to a
7 private action to Seattle Sports and to the California Attorney General’s office and the offices of
8 the County District attorneys and City Attorneys for each city with a population greater than
9 750,000 persons wherein the herein violations allegedly occurred.

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

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

2 24. Plaintiff, based on his best information and belief, avers that at all relevant times
3 herein, and at least since April 26, 2017, continuing until the present, that Seattle Sports has
4 continued to knowingly and intentionally expose California users and consumers of the Products
5 to DEHP without providing required warnings under Proposition 65.

6 25. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the product. Consequently, the primary route of
8 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
9 DEHP by dermal absorption through direct skin contact with the blue vinyl during routine use
10 when the dry bag compartment is opened or closed with bare hands. If the blue vinyl becomes
11 wet or is handled with wet hands, aqueous DEHP skin permeation rates have been reported to be
12 faster than neat DEHP permeation. The product can be expected to emit gas phase DEHP into
13 the air over the lifetime of the product. DEHP that leaches from the blue vinyl may contaminate
14 items contained within the dry bag that are subsequently handled, worn in direct contact with
15 skin, mouthed, or ingested by the user. If the dry bag is stored or transported in a carrier, DEHP
16 that leaches from the blue vinyl may contaminate other articles contained within the storage area
17 or carrier that are subsequently handled, worn, mouthed, or ingested by the user. Finally, while
18 mouthing of the product does not seem likely, some amount of exposure through ingestion can
19 occur by touching the product with subsequent touching of the user's hand to mouth.

20 26. Plaintiff, based on his best information and belief, avers that such exposures will
21 continue every day until clear and reasonable warnings are provided to Products' purchasers and
22 users or until these known toxic chemicals are removed from the Product.

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

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

