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ENDORSED
FILED
ALAMEDA COUNTY

SEP 14 2018

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 DICK'S SPORTING GOODS, INC.,
14 Defendant.

Case No.: **RG18920753**
**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELEIF**
**(Violation of Health & Safety Code §25249.5 et
seq.)**

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

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate (DINP),
27 toxic chemicals found in Field & Stream Angler Series tackle bags sold and/or distributed by
28 defendant Dick's Sporting Goods, Inc. ("Dick's" or "Defendant") in California.

BY FAX

1 3. DEHP and DINP are harmful chemicals known to the State of California to cause
2 cancer and, in the case of DEHP, reproductive toxicity. On January 1, 1988, and on December
3 20, 2013, the State of California listed DEHP and DINP as chemicals known to the State to cause
4 cancer and each chemical has come under the purview of Proposition 65 regulations since that
5 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On
6 October 24, 2003, the State of California listed DEHP as a chemical known to cause
7 reproductive toxicity.

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 or threaten to violate” the statute. Health & Safety
17 Code § 25249.7.

18 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
19 California, without a requisite exposure warning, Field & Stream Angler Series tackle bags (the
20 “Products”) that expose persons to DEHP and DINP.

21 7. Defendant’s failure to warn consumers and other individuals in California of the
22 health hazards associated with exposure to DEHP and DINP in conjunction with the sale and/or
23 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 Products with required warnings related to the

1 in the State of California, and/or has otherwise purposefully availed itself of the California
2 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On March 26, 2018, Plaintiff gave notice of alleged violation of Health and Safety
6 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
7 DEHP and DINP contained in the Products without proper warning, subject to a private action to
8 Defendant and to the California Attorney General's office and the offices of the County District
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons
10 wherein the herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

1 22. The Products contain DEHP and DINP, hazardous chemicals found on the
2 Proposition 65 list of chemicals known to be hazardous to human health.

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

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since October 24, 2017, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to DEHP and DINP without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of the Notice result from the purchase,
9 acquisition, handling and recommended use of the Product. Consequently, the primary route of
10 exposure to these chemicals is through dermal absorption. The Product can be expected to emit
11 gas phase DINP and DEHP into the air over and accumulate DINP and DEHP at the surface of
12 the item over the lifetime of the product. Users may potentially be exposed to DEHP and DINP
13 by dermal absorption through direct handling of the DEHP and DINP containing plastic during
14 placement and removal of items in the tackle bag. If the Product becomes wet, such as when it is
15 used to hold wet fishing tackle, or is handled with wet hands, aqueous DEHP and DINP skin
16 permeation rates have been reported to be faster than neat DEHP/DINP permeation. If the
17 Product is stored or transported in a carrier, DEHP and DINP that leaches from the plastic may
18 contaminate other articles contained within the storage area or carrier that are subsequently
19 handled, worn, mouthed, or ingested by the user. Finally, some amount of exposure through
20 ingestion can occur by handling the Product with subsequent touching of the user's hand to
21 mouth.

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

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

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

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

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


7 **PRAYER FOR RELIEF**

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

- 10 A. That the court assess civil penalties against Defendant in the amount of
11 \$2,500 per day for each violation in accordance with Health and Safety
12 Code § 25249.7(b);
- 13 B. That the court preliminarily and permanently enjoin Defendant mandating
14 Proposition 65 compliant warnings on the Product;
- 15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 16 D. That the court grant any further relief as may be just and proper.

17
18 Dated: September 14, 2018

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