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ENDORSED
FILED
ALAMEDA COUNTY
JUL 31 2018

CLERK OF THE SUPERIOR COURT,
By Lanette Buffin, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

Case No.:

Rg 8914926

10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

13 TROY LEE DESIGNS, LLC, CYCLE
14 GEAR, INC.,

Defendants.

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

(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**

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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
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1 Troy Lee Designs jet bags sold and/or distributed by defendants Cycle Gear, Inc. (“Cycle Gear”)
2 and Troy Lee Designs, LLC (“Troy Lee Designs”) (collectively, “Defendants”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and
4 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
5 known to the State to cause cancer and DEHP has come under the purview of Proposition 65
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
7 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
8 known to the State 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 or threaten to violate” the statute. Health & Safety
18 Code § 25249.7.

19 6. Plaintiff alleges that Defendants manufacture, distribute, sell and/or offer for sale
20 in California, without a requisite exposure warning, Troy Lee Designs jet bags (the “Products”)
21 that expose persons to 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 and/or distribution
24 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and
25 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).

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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 Defendants because each defendant is either a
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is
5 registered with the California Secretary of State as foreign corporations authorized to do business
6 in the State of California, and/or has otherwise purposefully availed itself of the California
7 market. 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 May 11, 2018, Plaintiff gave notice of alleged violations of Health and Safety
11 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
12 DEHP contained in the Products without proper warning, subject to a private action to
13 Defendants and to the California Attorney General’s office and the offices of the County District
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons
15 wherein the herein violations allegedly occurred.

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

21 18. After receiving the Notice, 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 Defendants under Proposition 65 to enforce the alleged violations which
24 are the subject of Plaintiff’s notices of violation.

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

27 **FIRST CAUSE OF ACTION**

28 **(By Plaintiff against Defendants 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 a manufacturer,
4 distributor and/or retailer of the Products.

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

7 23. The Products do 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 March 2, 2018, that Defendants have continued to knowingly and
10 intentionally expose California users and consumers of the Products to DEHP without providing
11 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 and DINP by dermal absorption through direct skin contact with the bag during routine
16 use when the mesh and plastic bottom are handled with bare hands. Items placed in the side
17 mesh pockets can absorb DINP and these items can be subsequently handled, held in direct
18 contact with skin, or mouthed. Finally, while mouthing of the product does not seem likely,
19 some amount of exposure through ingestion can occur by touching the product with subsequent
20 touching of the user's hand to mouth.

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

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

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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, Defendants 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 Defendants.

7 **PRAYER FOR RELIEF**

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

- 10 A. That the court assess civil penalties against Defendants 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 Defendants
- 14 mandating 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.

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18 Dated: July 31, 2018

BRODSKY & SMITH, LLC

By:  _____

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