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ENDORSED
FILED
ALAMEDA COUNTY

APR 05 2019

CLERK OF THE SUPERIOR COURT
By ALICIA ESPINOZA
Deputy

8 *Attorneys for Plaintiff*

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

11 ANTHONY FERREIRO,
12 Plaintiff,
13 vs.
14 CASL INDUSTRIES, LLC,
15 SPORTSMAN'S WAREHOUSE, INC.,
16 Defendants.

Case No.: **RG 19013888**
**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**
(Violation of Health & Safety Code § 25249.5 et
seq.)

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

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
28 Tanglefree Magnum blind bags sold and/or distributed by defendants Casl Industries, LLC

1 (“Casl Industries”), and Sportsman’s Warehouse, Inc. (“Sportsman’s Warehouse”) (collectively,
2 “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 it 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 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 and/or offer for sale in
20 California, without a requisite exposure warning, Tanglefree Magnum blind bags (the
21 “Products”) 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).
28

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 Defendants because each Defendant is either a
5 citizen of the State of California, has sufficient minimum contacts with the State of California, is
6 registered with the California Secretary of State as foreign corporations authorized to do business
7 in the State of California, and/or has otherwise purposefully availed itself of the California
8 market. 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 January 4, 2019, Plaintiff gave notice of alleged violation of Health and Safety
12 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
13 DEHP contained in the Products without proper warning, subject to a private action to
14 Defendants and to the California Attorney General's office and the offices of the County District
15 attorneys and City Attorneys for each city with a population greater than 750,000 persons
16 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 Defendants under Proposition 65 to enforce the alleged violations which
25 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 Defendants, as required by law.

28 **FIRST CAUSE OF ACTION**

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

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

4 21. Defendants have, at all times mentioned herein, acted as manufacturers,
5 distributors, and/or retailers of the Product.

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

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

9 24. Plaintiff, based on his best information and belief, avers that at all relevant times
10 herein, and at least since October 21, 2018, continuing until the present, that Defendants have
11 continued to knowingly and intentionally expose California users and consumers of the Product
12 to DEHP without providing required warnings under Proposition 65.

13 25. The exposures that are the subject of the Notice result from the purchase,
14 acquisition, handling and recommended use of the Product. Consequently, the primary route of
15 exposure to these chemicals is through dermal absorption. Users can be exposed to DEHP by
16 dermal absorption through direct skin contact with the Product during routine use when items are
17 inserted or removed from the Product with bare hands. Concentrations of DEHP can be expected
18 to build within the small, zippered interior plastic pouch and the interior of the zippered blind
19 bag. This DEHP can be absorbed to the surface of the interior contents that can subsequently be
20 handled, worn in direct contact with skin, mouthed or ingested by the user. Finally, while
21 mouthing of the Product does not seem likely, some amount of exposure through ingestion can
22 occur by touching the product with subsequent touching of the user's hand to mouth.

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

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

1 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
2 and offering of the Products 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, Defendants are liable for a maximum civil penalty of \$2,500 per day per
7 violation.

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

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

20
21 Dated: April 5, 2019

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