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9 ENDORSED
10 FILED
11 AT ALAMEDA COUNTY
12 FEB 03 2021

13 CLERK OF THE SUPERIOR COURT

14 By Ron DeGuz

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF ALAMEDA

17 **HG21090718**

18 Case No.:

19 ANTHONY FERREIRO,

20 Plaintiff,

21 vs.

22 UNIQUE SPORTS PRODUCTS, INC.,
23 DICK'S SPORTING GOODS, INC.,

24 Defendants.

25 **COMPLAINT FOR CIVIL PENALTIES AND
26 INJUNCTIVE RELIEF**

27 **(Violation of Health & Safety Code § 25249.5 et
28 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 to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Tourna ball totes/cases sold and/or distributed by defendant Unique Sports Products, Inc. ("Unique

1 Sports Products”) and defendant Dick’s Sporting Goods, Inc. (“Dick’s”) (collectively, the
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 known
5 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since
6 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
7 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
8 reproductive toxicity.

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

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
21 without a requisite exposure warning, Tourna ball totes/cases (the “Products”) that expose persons
22 to DEHP.

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

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement
2 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
3 jurisdiction over this lawsuit.

4 16. 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 market.
8 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
9 and permissible with traditional notions of fair play and substantial justice.

10 STATUTORY BACKGROUND

11 17. The people of the State of California declared in Proposition 65 their right “[t]o be
12 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
13 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

14 18. To effect this goal, Proposition 65 requires that individuals be provided with a
15 “clear and reasonable warning” before being exposed to substances listed by the State of California
16 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

17 No person in the course of doing business shall knowingly and intentionally expose any
18 individual to a chemical known to the state to cause cancer or reproductive toxicity without
19 first giving clear and reasonable warning to such individual...

20 19. An exposure to a chemical in a consumer product is one “which results from a
21 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
22 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
23 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
24 shall provide a warning to any person to whom the product is sold or transferred unless the product
25 is packaged or labeled with a clear and reasonable warning.”

1 reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a
2 chemical known to the State to cause cancer and reproductive toxicity.

3 23. The consumer exposures that are the subject of this Complaint result from dermal
4 absorption. Initial exposure would result from directly touching or holding the Products during
5 normal use. For example, the user would be expected to touch the Products when removing or
6 replacing items from the Products. Ingestion would occur from hand to mouth contact, for
7 example, from eating after having handled the Products.

8 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
9 and/or sold the Products in California since at least February 18, 2020. The Products continue to
10 be distributed and sold in California without the requisite warning information.

11 25. At all times relevant to this action, Defendants have knowingly and intentionally
12 exposed users and/or consumers of the Products to DEHP without first giving a clear and
13 reasonable exposure warning to such individuals.

14 26. As a proximate result of acts by each defendant, as a person in the course of doing
15 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
16 California, including in Alameda County, have been exposed to DEHP without a clear and
17 reasonable warning on the Products. The individuals subject to the violative exposures include
18 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
19 the Products.

20 **SATISFACTION OF NOTICE REQUIREMENTS**

21 27. On February 18, 2020, Plaintiff gave notice of alleged violation of Health and
22 Safety Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens
23 to DEHP contained in the Products without proper warning, subject to a private action to
24 Defendants and to the California Attorney General’s office and the offices of the County District
25 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
26 the herein violations allegedly occurred.

27 28. The Notice complied with all procedural requirements of Proposition 65 including
28 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at

1 least one person with relevant and appropriate expertise who reviewed relevant data regarding
2 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private
3 action.

4 29. After receiving the Notice, and to Plaintiff's best information and belief, none of
5 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
6 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
7 are the subject of the Notice.

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

10 **FIRST CAUSE OF ACTION**

11 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

12 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of
13 this Complaint as though fully set forth herein.

14 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
15 of the Product.

16 33. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list
17 of chemicals known to be hazardous to human health.

18 34. The Product does not comply with the Proposition 65 warning requirements.

19 35. Plaintiff, based on his best information and belief, avers that at all relevant times
20 herein, and at least since February 18, 2020, continuing until the present, that Defendants have
21 continued to knowingly and intentionally expose California users and consumers of the Product to
22 DEHP without providing required warnings under Proposition 65.

23 36. The exposures that are the subject of the Notice result from the purchase,
24 acquisition, handling and recommended use of the Products. Consequently, the primary route of
25 exposure to these chemicals is through dermal absorption. Initial exposure would result from
26 directly touching or holding the Products during normal use. For example, the user would be
27 expected to touch the Products when removing or replacing items from the Products. Ingestion
28

1 would occur from hand to mouth contact, for example, from eating after having handled the
2 Products.

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

6 38. Defendants have knowledge that the normal and reasonably foreseeable use of the
7 Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
8 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
9 the Products to consumers in California

10 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
11 Complaint.

12 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
13 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
18 relief:

19 A. That the court assess civil penalties against each defendant in the amount of \$2,500
20 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
21 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

22 B. That the court preliminarily and permanently enjoin Defendants mandating
23 Proposition 65 compliant warnings on the Products;

24 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
25 amount of \$50,000.00.

26 D. That the court grant any further relief as may be just and proper.

27 Dated: February 3, 2021

BRODSKY & SMITH, LLC

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