

1 Laralei Paras, State Bar No. 203319
SEVEN HILLS LLP
2 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
3 Telephone: (415) 926-7247
laralei@sevenhillsllp.com

4 Attorneys for Plaintiff
5 MY NGUYEN

ENDORSED
FILED
San Francisco County Superior Court

DEC 23 2020

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 CITY AND COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

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11 MY NGUYEN,

12 Plaintiff,

13 v.

14 COMBAT BRANDS, LLC; and
DOES 1-30, inclusive,

15 Defendants.

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CGC-20-588602

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65,
The Safe Drinking Water and Toxic
Enforcement Act of 1986
(Health & Safety Code § 25249.5 *et seq.*)

Action is an Unlimited Civil Case

1 Plaintiff MY NGUYEN, acting in the public interest, alleges a cause of action against
2 DEFENDANTS COMBAT BRANDS, LLC and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff MY NGUYEN in the
5 public interest of the citizens of the State of California to enforce the People’s right to be informed of
6 the health hazards caused by exposures to diisononyl phthalate (“**DINP**”), a toxic chemical found in
7 and on mini gloves sold by defendants in the State of California.

8 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
9 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
10 they are being exposed to substances known to the State of California to cause cancer through
11 exposures to DINP, present in and on mini gloves manufactured, distributed, imported, sold and
12 otherwise offered for sale or use throughout the state of California by defendants.

13 3. Detectable levels of DINP are found in and on the mini gloves defendants
14 manufacture, import, sell or distribute for sale to individuals throughout the state of California.

15 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
16 Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course
17 of doing business to knowingly and intentionally expose consumers in California to chemicals known
18 to the State to cause cancer without first providing a “clear and reasonable” health hazard warning to
19 such individuals prior to purchase or use.

20 5. MY NGUYEN contends and alleges defendants manufacture, distribute, import, sell,
21 and offer for sale, in or into California, mini gloves containing DINP without Proposition 65’s
22 requisite health hazard warning about the presence of, and the harms associated with exposures to,
23 the chemical, including, but not limited to, *Ringside Miniature Bag Gloves, SKU MBG RED, GTIN 6*
24 *09224 97910 1* (collectively referred to hereinafter, the “**PRODUCTS**”). Defendants’ conduct
25 subjects them to civil penalties for each violation, as well an injunction and preliminary and
26 permanent injunctive relief. Health & Safety Code §§ 25249.7(a) and (b).

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1 **PARTIES**

2 1. Plaintiff MY NGUYEN is a citizen of the state of California seeking to eliminate toxic
3 chemicals in consumer products, to increase public awareness of those chemicals and to promote
4 corporate responsibility. MY NGUYEN is a person within the meaning of Health & Safety Code
5 § 25249.11(a) and brings this action in the public interest pursuant to Health and Safety Code
6 § 25249.7(d).

7 2. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
8 Defendant COMBAT BRANDS, LLC was and is a person in the course of doing business, with ten
9 (10) or more employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

10 3. COMBAT BRANDS, LLC manufactures, imports, distributes, sells, and/or offers the
11 PRODUCTS for sale or use in the state of California, or implies by its conduct that it manufactures,
12 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the state of California.

13 4. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
14 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
15 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
16 manufacture, or each impliedly does so by its conduct, one or more of the PRODUCTS offered for
17 sale or use in California.

18 5. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
19 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
20 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each
21 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
22 retailers for sale or use in the State of California

23 6. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
24 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
25 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the
26 State of California.

27 7. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
28 unknown to plaintiff, who, therefore, sues said DEFENDANTS by their fictitious names, pursuant to

1 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each
2 of the fictitiously named Defendants is responsible in some manner for the acts and occurrences
3 alleged herein and the damages caused thereby. When ascertained, their true names and capacities
4 shall be reflected in an amended complaint.

5 8. At all times mentioned herein, COMBAT BRANDS, LLC, MANUFACTURER
6 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
7 hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

8 **JURISDICTION AND VENUE**

9 9. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code
10 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
11 Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
12 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
13 other trial courts.” The statute under which this action is brought does not specify any other basis of
14 subject matter jurisdiction.

15 10. The California Superior Court has jurisdiction over DEFENDANTS based on
16 plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm, corporation
17 or association that is a citizen of the State of California, does sufficient business in California, have
18 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
19 themselves of the California market through their manufacture, importation, distribution, promotion,
20 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders
21 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
22 play and substantial justice.

23 11. Venue is proper in the Superior Court for the City and County of San Francisco
24 pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of
25 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one
26 or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or
27 because DEFENDANTS conducted, and continue to conduct, business in the city and county of San
28 Francisco with respect to the PRODUCTS that are the subject of this action.

1 **REGULATORY BACKGROUND AND LAW**

2 12. In 1986, the people of the State of California approved an initiative addressing
3 concerns regarding the harms caused by hazardous chemicals and declaring their right “[t]o be
4 informed about exposures the chemicals that cause cancer, birth defects, or other reproductive harm.”
5 Ballot Pamp., Proposed General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

6 13. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
7 codified at Health & Safety Code §§ 25249.6 *et seq.*, Proposition 65 states in relevant part that “[n]o
8 person in the course of doing business shall knowingly and intentionally expose any individual to a
9 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
10 warning to such individual...”

11 14. Under the Act, a “person the course of doing business” is defined as a business with
12 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
13 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” health
14 hazard warning. Health & Safety Code § 25249.6

15 15. An exposure to a hazardous chemical is defined as one that “results from a person’s
16 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
17 27 C.C.R. § 25600(h).

18 16. Proposition 65 provides that persons violating the statute may be enjoined in any court
19 of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per violation.
20 Health & Safety Code § 25249.7.

21 17. On December 20, 2013, pursuant to Proposition 65, California identified and listed
22 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
23 warning” requirements one year later, on December 20, 2014. Cal. Code Regs. tit. 27, § 27001(c);
24 Health & Safety Code §§ 25249.8, 25249.10(b).

25 **STATEMENT OF FACTS**

26 18. Plaintiff purchased, investigated and tested DEFENDANTS’ PRODUCTS at an
27 accredited lab, and, after consultation with a person with relevant and appropriate expertise who
28 reviewed the collected data and analyzed the risk of exposures to DINP, determined the PRODUCTS

1 exposure consumers in California to the listed chemical at levels that require a warning under the
2 statute, based on consumers touching, handling or otherwise utilizing the PRODUCTS in accordance
3 with their reasonably foreseeable usage.

4 19. Plaintiff purchased, or caused to be purchased, the PRODUCT without a warning in
5 the state of California.

6 20. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting
7 there was a reasonable and meritorious case for this private action, and included the factual
8 information supporting the certificate served on the California Attorney General's Office, as required.
9 Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

10 21. Thereafter, on August 19, 2020, plaintiff served a 60-Day Notice of Violation
11 ("Notice"), together with the requisite certificate of merit, on Combat Brands, LLC, the California
12 Attorney General's Office, and the requisite public enforcement agencies, alleging that, as a result of
13 DEFENDANTS' sales of the PRODUCTS, consumers in the state of California were and are being
14 exposed to DINP resulting from their reasonably foreseeable use of the PRODUCTS without first
15 receiving a "clear and reasonable warning," as required by Proposition 65.

16 22. After receiving plaintiff's Notice, no public enforcement agency has commenced and
17 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
18 the alleged violations that are the subject of the Notice.

19 **FIRST CAUSE OF ACTION**

20 **(Violation of Proposition 65 - Against All DEFENDANTS)**

21 23. MY NGUYEN realleges and incorporates by reference, as if fully stated herein, the
22 allegations set forth in Paragraphs 1 through 22, inclusive.

23 24. DEFENDANTS' PRODUCTS contain DINP in levels that require a clear and
24 reasonable warning under Proposition 65.

25 25. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
26 import, distribute, sell, and offer for sale in California contain DINP. Plaintiff's Notice also informed
27 DEFENDANTS of the presence of DINP in the PRODUCTS.

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1 26. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
2 for sale or use in the state of California cause exposures to DINP, as a result of the reasonably
3 foreseeable use of the PRODUCTS, through dermal contact and/or ingestion.

4 27. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
5 continues to cause, exposures to DINP.

6 28. DEFENDANTS know that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes individuals to DINP through dermal contact and/or ingestion.

8 29. DEFENDANTS intend that exposures to DINP from the reasonably foreseeable use of
9 the PRODUCTS will occur by their deliberate, non-accidental participation in the California
10 marketplace.

11 30. The exposures to DINP, caused by DEFENDANTS and endured by consumers and
12 other individuals in the state of California, are not exempt from the “clear and reasonable” warning
13 requirements of Proposition 65.

14 31. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
15 and other individuals in the state of California who have been, or who will be, exposed to DINP
16 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

17 32. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
18 directly by California voters, consumers and other individuals exposed to DINP through dermal
19 contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without
20 a “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable
21 harm for which they have no plain, speedy, or adequate remedy at law.

22 33. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
23 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
24 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are
25 ongoing and continuous in nature and, unless enjoined, will continue in the future.

26 34. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
27 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
28 per day for each violation.

