

1 Laralei Paras, State Bar No. 203319
2 Rebecca M. Jackson, Bar No. 221583
3 Seven Hills LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 laralei@sevenhillslp.com
8 rebecca@sevenhillslp.com

9 Attorneys for Plaintiff
10 MY NGUYEN

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

09/15/2021
Clerk of the Court
BY: EDWARD SANTOS
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

MY NGUYEN,

Plaintiff,

v.

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

Defendants.

Case No. CGC-20-588602

**FIRST AMENDED 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.)

UNLIMITED CIVIL

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 First Amended Complaint is a representative action brought by plaintiff MY
5 NGUYEN in the public interest of the citizens of the State of California to enforce the People’s right
6 to be informed of the health hazards caused by exposures to diisononyl phthalate (“**DINP**”) and di(2-
7 ethylhexyl) phthalate (“**DEHP**”), toxic chemicals found in and on the mini gloves and/or gloves
8 manufactured, imported, distributed, sold or offered for sale by Defendants in the State of California.

9 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
10 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
11 (“**consumers**”) they are being exposed to substances known to the State of California to cause cancer
12 and birth defects or other reproductive harm through exposures to DINP and DEHP, when they
13 purchase, use or handle Defendants’ mini gloves and/or gloves.

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

16 4. Detectable levels of DEHP are found in and on the gloves that Defendants
17 manufacture, import, sell or distribute for sale to individuals throughout California.

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

23 6. MY NGUYEN contends and alleges Defendants manufacture, distribute, import, sell,
24 and offer for sale, in and into California mini gloves and gloves (collectively, the “**PRODUCTS**”)
25 containing DINP and/or DEHP, without Proposition 65’s requisite health hazard warning regarding
26 the harms associated with exposures to the chemicals, including, but not limited to, *Ringside*
27 *Miniature Bag Gloves, SKU MBG RED, GTIN 6 09224 97910 1* and *Ringside Pro Style Boxing*
28 *Training Gloves Kickboxing Muay Thai Gel Sparring Punching Bag Mitts, SKU BG16 BK/PK S/M-P,*

1 *GTIN 7 99637 30307 2, ASIN B00XM27YBG*. Defendants' conduct subjects them to civil penalties
2 for each violation, enjoinder as well as preliminary and permanent injunctive relief. Health &
3 Safety Code § 25249.7(a) and (b).

4 **PARTIES**

5 7. Plaintiff MY NGUYEN is a citizen of the state of California seeking to eliminate toxic
6 chemicals in consumer products, to increase public awareness of those chemicals, and to promote
7 corporate responsibility. MY NGUYEN is a person within the meaning of Health & Safety Code
8 § 25249.11(a), and it brings this action in the public interest, pursuant to Health and Safety Code
9 § 25249.7(d).

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

13 9. COMBAT BRANDS, LLC manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
15 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

16 10. Defendants DOES 1-10 ("**MANUFACTURER DEFENDANTS**") are each a person
17 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
18 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
19 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
20 offered for sale or use in California.

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

26 12. Defendants DOES 21-30 ("**RETAILER DEFENDANTS**") are each a person in the
27 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

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1 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
2 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
3 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
4 respect to the PRODUCTS that are the subject of this action.

5 **REGULATORY BACKGROUND AND LAW**

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

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

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

19 22. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
20 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
21 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s
22 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
23 27 C.C.R. § 25600(h).

24 23. Under Proposition 65, persons violating the statute may be enjoined in any court of
25 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
26 Health & Safety Code § 25249.7.

27 24. On December 20, 2013, pursuant to Proposition 65, California identified and listed
28 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable

1 warning” requirements one year later, on December 20, 2014. Cal. Code Regs. tit. 27, § 27001(c);
2 Health & Safety Code §§ 25249.8, 25249.10(b).

3 25. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
4 California identified and listed DEHP as a chemical known to the State to cause birth defects and
5 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one
6 year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
7 §§ 25249.8, 25249.10(b).

8 STATEMENT OF FACTS

9 26. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

10 27. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,
11 and consulted with a person with relevant and appropriate knowledge and expertise, who, after
12 reviewing the collected data and analyzing the risk of exposure to DINP and DEHP, determined the
13 PRODUCTS subject consumers in California to exposure to the listed chemicals at levels requiring a
14 warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in
15 accordance with their reasonably foreseeable and intended usages.

16 28. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
17 there was a reasonable and meritorious case for this private action and included the factual
18 information supporting the certificate when it served the notice on the California Attorney General’s
19 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

20 29. Thereafter, on August 19, 2020, plaintiff served a 60-Day Notice of Violation
21 (“**Notice**”), together with the certificate of merit, on COMBAT BRANDS, LLC, the California
22 Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a result of
23 DEFENDANTS’ sales of mini gloves, consumers in the State of California were, and are, being
24 exposed to DINP through their reasonably foreseeable use of the mini gloves as intended without first
25 receiving a “clear and reasonable warning,” as required by Proposition 65.

26 30. On March 12, 2021, plaintiff served a Supplemental 60-Day Notice of Violation (with
27 Notice, collectively, the “**Notices**”), together with the certificate of merit, on COMBAT BRANDS,
28 LLC, Amazon.com, Inc., the California Attorney General’s Office, and the requisite public

1 enforcement agencies, alleging, as a result of DEFENDANTS' sales of the PRODUCTS, consumers
2 in the State of California were, and are, being exposed to DINP and DEHP through their reasonably
3 foreseeable use of the PRODUCTS as intended without first receiving a "clear and reasonable
4 warning," as required by Proposition 65.

5 31. After receiving plaintiff's Notices, no public enforcement agency has commenced and
6 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
7 the alleged violations that are the subject of the Notices.

8 **FIRST CAUSE OF ACTION**

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

10 32. MY NGUYEN realleges and incorporates by reference, as if fully stated herein, the
11 allegations set forth in Paragraphs 1 through 30, inclusive.

12 33. DEFENDANTS' PRODUCTS contain DINP and DEHP at levels requiring a clear and
13 reasonable warning under Proposition 65.

14 34. DEFENDANTS know or should have known the PRODUCTS they manufacture,
15 import, distribute, sell, and offer for sale in California contain DINP and DEHP. As a result of
16 plaintiff's Notices, DEFENDANTS also have actual knowledge of the presence of DINP and DEHP
17 in the PRODUCTS.

18 35. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
19 sale in or into the State of California cause exposures to DINP and DEHP, both direct and/or indirect
20 dermal contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

21 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
22 continues to cause, exposures to DINP and DEHP.

23 37. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
24 exposes individuals to DINP and DEHP through direct and indirect dermal contact and/or ingestion.

25 38. DEFENDANTS intend that exposures to DINP and DEHP from the reasonably
26 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
27 California marketplace.

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1 39. The exposures to DINP and DEHP, caused by DEFENDANTS and endured by
2 consumers and other individuals in California, are not exempt from the “clear and reasonable”
3 warning requirements of Proposition 65.

4 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
5 and other individuals in California who have been, or who will be, exposed to DINP and DEHP
6 through direct and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS
7 as intended.

8 41. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
9 and other individuals, exposed to DINP and DEHP through dermal contact and ingestion as a result of
10 their use of the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard
11 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
12 or adequate remedy at law.

13 42. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
14 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
15 continued beyond their receipt of plaintiff’s Notices. As such, DEFENDANTS’ violations are
16 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

20 44. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
21 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, MY NGUYEN prays for relief and judgment against DEFENDANTS, and each of them, as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” to consumers addressing the harms associated with exposures to DINP and DEHP;

2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California that do not bear a clear and reasonable health hazard warning;

3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;


4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred herein; and

5. That the Court grant any further relief as it deems just and equitable.

Dated: September 10, 2021

Respectfully submitted,

SEVEN HILLS LLP

By: 
Laralei Paras
Attorneys for Plaintiff
My Nguyen

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PROOF OF SERVICE

I am over 18 years of age and not a party to this action. I am employed in the county where the mailing took place. Seven Hills LLP's business address is 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111.

On September __, 2021, I caused the following document(s) to be served, described as:

FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

on each interested party as follows:

Sarah B. Evans
Schwartz Semerdjian Cauley & Evans LLP
101 West Broadway, Suite 810
San Diego, CA 92101
Attorneys for Defendant
Combat Brands, LLC

XXXXXX (BY MAIL) I placed envelopes with fully pre-paid postage thereon in the United States mail at San Francisco, California, a true and correct copy of the foregoing document(s), in sealed envelope(s) addressed to each interested party as set forth above.

Executed this __ day of September 2021, at San Francisco, California, I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

James Wheeler