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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/27/2021
Clerk of the Court
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Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-21-594104

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 LIBERTY MOUNTAIN SPORTS, LLC,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

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

18 **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 at
21 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 carbon monoxide, a toxic chemical found in Olicamp fire starters,
28

1 manufactured, distributed, and/or sold by defendant Liberty Mountain Sports, LLC (“Liberty
2 Mountain” or the “Defendant”) in California.

3 3. Carbon monoxide is a harmful chemical known to the State of California to cause
4 reproductive toxicity. On July 1, 1989, the State of California listed carbon monoxide as a chemical
5 known to the State to cause reproductive toxicity and it has come under the purview of Proposition
6 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
7 25249.8 & 25249.10(b).

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

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

19 6. Plaintiff alleges that Defendant manufactures, distributes, and/or offers for sale in
20 California, without a requisite exposure warning, Olicamp fire starters (the “Products”) that expose
21 persons to carbon monoxide.

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

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

28

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
2 Defendant to provide purchasers or users of the Products with required warnings related to the
3 dangers and health hazards associated with exposure to carbon monoxide pursuant to Health and
4 Safety Code § 25249.7(a).

5 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

6 **PARTIES**

7 11. Plaintiff is a citizen of the State of California acting in the interest of the general
8 public to promote awareness of exposures to toxic chemicals in products sold in California and to
9 improve human health by reducing hazardous substances contained in such items. He brings this
10 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11 12. Defendant Liberty Mountain, through its business, effectively manufactures,
12 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it
13 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use
14 in the State of California.

15 13. Plaintiff alleges that defendant Liberty Mountain is a "person" in the course of
16 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

17 **VENUE AND JURISDICTION**

18 14. Venue is proper in the County of San Francisco because one or more of the
19 instances of wrongful conduct occurred, and continue to occur in this county and/or because
20 Defendant conducted, and continues to conduct, business in the County of San Francisco with
21 respect to the Products.

22 15. This Court has jurisdiction over this action pursuant to California Constitution
23 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
24 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement
25 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
26 jurisdiction over this lawsuit.

27 16. This Court has jurisdiction over Defendant because defendant is either a citizen of
28 the State of California, has sufficient minimum contacts with the State of California, is registered

1 with the California Secretary of State as foreign corporations authorized to do business in the State
2 of California, and/or has otherwise purposefully availed itself of the California market. Such
3 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
4 permissible with traditional notions of fair play and substantial justice.

5 **STATUTORY BACKGROUND**

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

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

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

15 19. An exposure to a chemical in a consumer product is one “which results from a
16 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
17 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
18 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
19 shall provide a warning to any person to whom the product is sold or transferred unless the product
20 is packaged or labeled with a clear and reasonable warning.”

21 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
22 more of the following methods individually or in combination:¹

23 a. A warning that appears on a product’s label or other labeling.
24
25
26

27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 products are used. These violations occur during the foreseeable use of the Products and when the
2 Products are used as intended. These violations are alleged for consumer and environmental
3 exposures.

4 24. Defendant has manufactured, processed, marketed, distributed, offered to sell
5 and/or sold the Products in California since at least January 28, 2021. The Products continue to be
6 distributed and sold in California without the requisite warning information.

7 25. At all times relevant to this action, Defendant has knowingly and intentionally
8 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
9 giving a clear and reasonable exposure warning to such individuals.

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

16 **SATISFACTION OF NOTICE REQUIREMENTS**

17 27. On January 28, 2021, Plaintiff gave notice of alleged violation of Health and Safety
18 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
19 carbon monoxide contained in the Products without proper warning, subject to a private action to
20 Defendant and to the California Attorney General's office and the offices of the County District
21 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
22 the herein violations allegedly occurred.

23 28. The Notice complied with all procedural requirements of Proposition 65 including
24 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
25 least one person with relevant and appropriate expertise who reviewed relevant data regarding
26 carbon monoxide exposure, and that counsel believed there was meritorious and reasonable cause
27 for a private action.

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

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

7 **FIRST CAUSE OF ACTION**

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

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

11 32. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
12 the Products.

13 33. The Products contain carbon monoxide, a hazardous chemical found on the
14 Proposition 65 list of chemicals known to be hazardous to human health.

15 34. The Products do not comply with the Proposition 65 warning requirements.

16 35. Plaintiff, based on his best information and belief, avers that at all relevant times
17 herein, and at least since January 28, 2021, continuing until the present, that Defendant has
18 continued to knowingly and intentionally expose California users and consumers of the Products
19 to carbon monoxide without providing required warnings under Proposition 65.

20 36. The exposures that are the subject of the Notice result from the purchase,
21 acquisition, handling and recommended use of the Products. The Products, when used as intended,
22 exposes the user to carbon monoxide. The Products are designed to start fires, involving
23 combustion of carbon-based fuels. Exposure to carbon monoxide would result from inhalation of
24 combustion products emitted during the process of using the Products. These Products cause
25 carbon monoxide exposures to occur in people's yards and everywhere else throughout California
26 where these products are used. These violations occur during the foreseeable use of the Products
27 and when the Products are used as intended. These violations are alleged for consumer and
28 environmental exposures.

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

4 38. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to carbon monoxide, and Defendant intends that exposures to carbon
6 monoxide will occur by its deliberate, non-accidental participation in the importation, distribution,
7 sale and offering of the Products to consumers in California

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

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

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
16 relief:

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

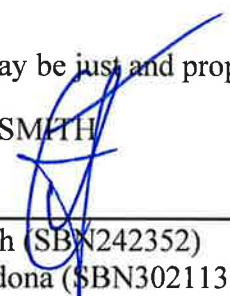
20 B. That the court preliminarily and permanently enjoin Defendant mandating
21 Proposition 65 compliant warnings on the Products;

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

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

25 Dated: July 27, 2021

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