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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

10/28/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-22-602638

GABRIEL ESPINOZA,

Plaintiff,

vs.

MARUCCI SPORTS, LLC, AMERICAN
SPORTS LICENSING, LLC,
AMERICAN SPORTS LICENSING,
INC., DICK'S SPORTING GOODS,
INC.,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

Plaintiff Gabriel Espinoza ("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

1 hazards caused by exposure to chromium (hexavalent compounds) (“chromium (VI)”), a toxic
2 chemical found in Marucci batting gloves, sold and/or distributed by defendants Marucci Sports,
3 LLC (“Marucci”), American Sports Licensing, LLC; American Sports Licensing, Inc.; Dick’s
4 Sporting Goods, Inc (collectively “Dick’s Sporting Goods” and with Marucci “Defendants”) in
5 California.

6 3. Chromium (VI) is a harmful chemical known to the State of California to cause
7 cancer and adverse Reproductive Toxicity. On February 27, 1987, the State of California listed
8 chromium (VI) as a chemical known to the State to cause reproductive toxicity and it has come
9 under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §
10 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On December 19, 2008, the State of
11 California listed chromium (VI) as a chemical known to cause adverse reproductive effects.

12 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
13 within California or sell products therein to comply with Proposition 65 regulations. Included in
14 such regulations is the requirement that businesses must label any product containing a Proposition
15 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
16 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
17 chemical.

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

23 6. Plaintiff alleges that Defendants distributes and/or offers for sale in California,
24 without a requisite exposure warning, Marucci batting gloves (the “Products”) that expose persons
25 to chromium (VI) when used for their intended purpose.

26 7. Defendants’ failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to chromium (VI) in conjunction with the sale and/or
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1 distribution of the Products is a violation of Proposition 65 and subjects Defendants to the
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Products with required warnings related to the
7 dangers and health hazards associated with exposure to chromium (VI) pursuant to Health and
8 Safety Code § 25249.7(a).

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

10 **PARTIES**

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

15 12. Marucci, through its business, effectively imports, distributes, sells, and/or offers
16 the Products for sale or use in the State of California, or it implies by its conduct that it imports,
17 distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff
18 alleges that defendant Marucci is a "person" in the course of doing business within the meaning
19 of Health & Safety Code sections 25249.6 and 25249.11.

20 13. Dick's Sporting Goods, through its businesses, effectively imports, distributes,
21 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
22 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
23 Plaintiff alleges that defendant Dick's Sporting Goods is a "person" in the course of doing business
24 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

25 **VENUE AND JURISDICTION**

26 14. Venue is proper in the County of San Francisco because one or more of the
27 instances of wrongful conduct occurred and continue to occur in this county and/or because
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1 Defendants conducted, and continue to conduct, business in the County of San Francisco with
2 respect to the Products.

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

8 16. This Court has jurisdiction over Defendants because each defendant is either a
9 citizen of the State of California, has sufficient minimum contacts with the State of California, is
10 registered with the California Secretary of State as foreign corporations authorized to do business
11 in the State of California, and/or has otherwise purposefully availed itself of the California market.
12 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
13 and permissible with traditional notions of fair play and substantial justice.

14 **STATUTORY BACKGROUND**

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

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

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

23 19. An exposure to a chemical in a consumer product is one “which results from a
24 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
25 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
26 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
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1 shall provide a warning to any person to whom the product is sold or transferred unless the product
2 is packaged or labeled with a clear and reasonable warning.”

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

5 a. A warning that appears on a product’s label or other labeling.

6 b. Identification of the product at the retail outlet in a manner which provides
7 a warning. Identification may be through shelf labeling, signs, menus, or a combination
8 thereof.

9 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
10 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
11 with such conspicuousness, as compared with other words, statements, designs, or devices
12 in the label, labeling or display as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use.

14 d. A system of signs, public advertising identifying the system and toll-free
15 information services, or any other system that provides clear and reasonable warnings.

16 21. Proposition 65 provides that any “person who violates or threatens to violate” the
17 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
18 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
19 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
20 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
21 365 days.

22 **FACTUAL BACKGROUND**

23 22. On February 27, 1987, the State of California listed chromium (VI) as a chemical
24 known to the State to cause cancer and it has come under the purview of Proposition 65 regulations
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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 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
2 25249.10(b). On December 19, 2008, the State of California listed chromium (VI) as a chemical
3 known to cause adverse reproductive effects in both males and females. In summary, chromium
4 (VI) was listed under Proposition 65 as a chemical known to the State to cause cancer and adverse
5 reproductive effects in both males and females.

6 23. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the Product. The primary route of exposure to the
8 chromium (VI) is through dermal absorption directly through the skin when consumers use, touch,
9 or handle the Product. Exposure through ingestion will occur by touching the Product with
10 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
11 with the Products regarding the health hazards of exposure to chromium (VI).
12

13 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
14 and/or sold the Products in California since at least August 6, 2021. The Products continue to be
15 distributed and sold in California without the requisite warning information.

16 25. At all times relevant to this action, Defendants have knowingly and intentionally
17 exposed users, consumers and/or patients to the Products and the chromium (VI) without first
18 giving a clear and reasonable exposure warning to such individuals.

19 26. As a proximate result of acts by each defendant, as a person in the course of doing
20 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
21 California, including in San Francisco County, have been exposed to chromium (VI) without a
22 clear and reasonable warning on the Products. The individuals subject to the violative exposures
23 include normal and foreseeable users, consumers and patients that use the Products, as well as all
24 others exposed to the Products.

25 **SATISFACTION OF NOTICE REQUIREMENTS**

26 27. On June 12, 2021, Plaintiff purchased the Product from Dick's Sporting Goods. At
27 the time of purchase, Marucci and Dick's Sporting Goods did not provide a Proposition 65
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1 exposure warning for chromium (VI) or any other Proposition 65 listed chemical in a manner
2 consistent with H&S Code § 25603.1 as described *supra*.

3 28. The Product was sent to a testing laboratory to determine the chromium (VI)
4 content of the Product.

5 29. On August 2, 2021, the laboratory provided the results of its analysis. Results of
6 this test determined the Product exposes users to chromium (VI) (the “Chemical Test Report”).

7 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
8 to determine if, based on the findings of the Chemical Test Report and the reasonable and
9 foreseeable use of the Product, exposure to chromium (VI) will occur at levels that require
10 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
11 the California Code of Regulations.

12 31. On August 6, 2021, Plaintiff received from the analytical chemist an exposure
13 assessment report which concluded that persons in California who use the Products will be exposed
14 to levels of chromium (VI) that require a Proposition 65 exposure warning.

15 32. On August 6, 2021, Plaintiff gave notice of alleged violation of Health and Safety
16 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
17 chromium (VI) contained in the Products without proper warning, subject to a private action to
18 Defendants and to the California Attorney General’s office and the offices of the County District
19 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
20 the herein violations allegedly occurred.

21 33. The Notice complied with all procedural requirements of Proposition 65 including
22 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
23 least one person with relevant and appropriate expertise who reviewed relevant data regarding
24 chromium (VI) exposure, and that counsel believed there was meritorious and reasonable cause
25 for a private action.

26 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of
27 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
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1 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
2 are the subject of the Notice.

3 35. Plaintiff is commencing this action more than sixty (60) days from the date of the
4 Notice to Defendant, as required by law. Plaintiff and Defendants agreed to toll the statute of
5 limitations until October 30, 2022.

6 **FIRST CAUSE OF ACTION**

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

8 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
9 this Complaint as though fully set forth herein.

10 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
11 of the Products.

12 38. Use of the Products will expose users and consumers thereof to chromium (VI), a
13 hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human
14 health.

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

16 40. Plaintiff, based on his best information and belief, avers that at all relevant times
17 herein, and at least since August 6, 2021, continuing until the present, that Defendants have
18 continued to knowingly and intentionally expose California users and consumers of the Products
19 to chromium (VI) without providing required warnings under Proposition 65.

20 41. The exposures that are the subject of the Notice result from the purchase,
21 acquisition, handling and recommended use of the Product. The primary route of exposure to the
22 chromium (VI) is through dermal absorption directly through the skin when consumers use, touch,
23 or handle the Product. Exposure through ingestion will occur by touching the Product with
24 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
25 with the Products regarding the health hazards of exposure to chromium (VI).
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1 42. 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 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to chromium (VI), and Defendants intend those exposures to
6 chromium (VI) will occur by its deliberate, non-accidental participation in the importation,
7 distribution, sale and offering of the Products to consumers in California

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

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

12 46. 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 Defendants.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
3 relief:

4 A. That the court assess civil penalties against each defendant in the amount of \$2,500
5 per day for each violation for up to 365 days in accordance with Health and Safety Code §
6 25249.7(b);

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

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

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

12 Dated: October 28, 2022

BRODSKY & SMITH

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