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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

03/02/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-23-604901

9 EMA BELL,

10 Plaintiff,

11 vs.

12 ADVENTURE PRODUCTS, INC.,
13 SPORTSMAN'S WAREHOUSE, INC.,

14 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

15 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause
16 of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
20 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
21 "[n]o 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
23 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in EGO-S1
27 Genesis Fishing Net (grips) sold and/or distributed by defendants Adventure Products, Inc.

1 (“Adventure Products”) and Sportsman’s Warehouse, Inc. (“Sportsman’s”) (collectively,
2 “Defendants”) in California.

3 3. DINP is a harmful chemical known to the State of California to cause cancer. On
4 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause
5 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
6 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
8 within California or sell products therein to comply with Proposition 65 regulations. Included in
9 such regulations is the requirement that businesses must label any product containing a Proposition
10 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
11 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
12 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 Defendants distribute and/or offer for sale in California,
20 without a requisite exposure warning, EGO-S1 Genesis Fishing Nets (the “Products”) that expose
21 persons to DINP when used for their intended purpose.

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

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

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

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

9 **STATUTORY BACKGROUND**

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

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

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

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

1 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
2 to determine if, based on the findings of the Chemical Test Report and the reasonable and
3 foreseeable use of the Product, exposure to DINP will occur at levels that require Proposition 65
4 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
5 Code of Regulations.

6 31. On March 2, 2022, Plaintiff received from the analytical chemist an exposure
7 assessment report which concluded that persons in California who use the Products will be exposed
8 to levels of DINP that require a Proposition 65 exposure warning.

9 32. On March 2, 2022, Plaintiff gave notice of alleged violation of Health and Safety
10 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
11 DINP from use of the Products without proper warning, subject to a private action to Defendants
12 and to the California Attorney General's office and the offices of the County District attorneys and
13 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
14 violations allegedly occurred.

15 33. The Notice complied with all procedural requirements of Proposition 65 including
16 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
17 least one person with relevant and appropriate expertise who reviewed relevant data regarding
18 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private
19 action.

20 34. After receiving the Notice, and to Plaintiff's best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
22 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
23 are the subject of the Notice.

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

1 **FIRST CAUSE OF ACTION**

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

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

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

7 38. Use of the Products will expose users and consumers thereof to DINP, a hazardous
8 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

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

10 40. Plaintiff, based on her best information and belief, avers that at all relevant times
11 herein, and at least since March 2, 2022, continuing until the present, that Defendants have
12 continued to knowingly and intentionally expose California users and consumers of the Products
13 to DINP without providing required warnings under Proposition 65.

14 41. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the Product. The primary route of exposure to the
16 is through dermal absorption directly through the skin when consumers use, touch, or handle the
17 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
18 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
19 regarding the health hazards of exposure.

20 42. Plaintiff, based on her best information and belief, avers that such exposures will
21 continue every day until clear and reasonable warnings are provided to purchasers and users or
22 until this known toxic chemical is removed from the Products.

23 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
24 Products exposes individuals to DINP, and Defendants intend that exposures to DINP will occur
25 by their deliberate, non-accidental participation in the importation, distribution, sale and offering
26 of the Products to consumers in California.

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

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
7 relief:

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

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

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

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

16 Dated: March 2, 2023

BRODSKY & SMITH

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