

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY SMITH
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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County of San Francisco

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Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 GABRIEL ESPINOZA,

13 Plaintiff,

14 vs.

15 DICK'S SPORTING GOODS, INC.,
16 AMERICAN SPORTS LICENSING,
17 INC., AMERICAN SPORTS
18 LICENSING, LLC,

19 Defendants.

Case No.:

CGC-24-611936

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

20 Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the following
21 cause of action in the public interest of the citizens of the State of California.

22 **BACKGROUND OF THE CASE**

23 1. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
25 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

29 2. This complaint is a representative action brought by Plaintiff in the public interest
30 of the citizens of the State of California to enforce the People's right to be informed of the health
31 hazards caused by exposure to chromium (hexavalent compounds) ("chromium (VI)"), a toxic

1 chemical found in *Franklin*® pickleball performance leather gloves, UPC# 025725528189, sold
2 and/or distributed by defendants Dick’s Sporting Goods, Inc., American Sports Licensing, Inc.,
3 and/or American Sports Licensing, LLC (collectively, “Dick’s Sporting Goods” or “Defendants”
4 and each a “Defendant”) in California.

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

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

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
19 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
20 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
21 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
22 25249.7.

23 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
24 without a requisite exposure warning, *Franklin*® pickleball performance leather gloves, UPC#
25 025725528189 (the “Products”) that expose persons to chromium (VI) when used for their
26 intended purpose.

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

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

8 20. An exposure to a chemical in a consumer product is one “which results from a
9 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
10 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
11 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
12 shall provide a warning to any person to whom the product is sold or transferred unless the product
13 is packaged or labeled with a clear and reasonable warning.”

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

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

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

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

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

3 22. Proposition 65 provides that any “person who violates or threatens to violate” the
4 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
5 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
6 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
7 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
8 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

9 **FACTUAL BACKGROUND**

10 23. On February 27, 1987, the State of California listed chromium (VI) as a chemical
11 known to the State to cause cancer and it has come under the purview of Proposition 65 regulations
12 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
13 25249.10(b). On December 19, 2008, the State of California listed chromium (VI) as a chemical
14 known to cause birth defects or other reproductive harm. In summary, chromium (VI) was listed
15 under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other
16 reproductive harm.

17 24. The exposures that are the subject of the Notice result from the purchase,
18 acquisition, handling and recommended use of the Products. Increased duration of contact with the
19 Products, natural aging of the Products, temperature, light exposure, and contact of the Products
20 with oxidizing agents and alkaline solutions will result in increased conversion of chromium (III)
21 to chromium (VI) in the Products and thus increased dermal exposure to chromium (VI). Direct
22 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) will occur by
23 touching the Products with subsequent touching of the user’s hand to mouth.

24 25. Defendants have manufactured, processed, marketed, distributed, offered to sell
25 and/or sold the Products in California since at least June 26, 2023. The Products continue to be
26 distributed and sold in California without the requisite warning information.

1 chromium (VI) contained in the Products without proper warning, subject to a private action to
2 Defendants and to the California Attorney General's office and the offices of the County District
3 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
4 the herein violations allegedly occurred.

5 34. The Notice complied with all procedural requirements of Proposition 65 including
6 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
7 least one person with relevant and appropriate expertise who reviewed relevant data regarding
8 chromium (VI) exposure, and that counsel believed there was meritorious and reasonable cause
9 for a private action.

10 35. After receiving the Notice, and to Plaintiff's best information and belief, none of
11 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
12 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
13 are the subject of the Notice.

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

16 **FIRST CAUSE OF ACTION**

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

18 37. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 36 of
19 this Complaint as though fully set forth herein.

20 38. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
21 of the Products.

22 39. Use of the Products will expose users and consumers thereof to chromium (VI), a
23 hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human
24 health.

25 40. The Products do not comply with the Proposition 65 warning requirements.

26 41. Plaintiff, based on his best information and belief, avers that at all relevant times
27 herein, and at least since June 26, 2023, continuing until the present, that Defendants have
28

1 continued to knowingly and intentionally expose California users and consumers of the Products
2 to chromium (VI) without providing required warnings under Proposition 65.

3 42. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, handling and recommended use of the Products. Consequently, the primary route of
5 exposure to these chemicals is through dermal exposure. Increased duration of contact with the
6 Products, natural aging of the Products, temperature, light exposure, and contact of the Products
7 with oxidizing agents and alkaline solutions will result in increased conversion of chromium (III)
8 to chromium (VI) in the Products and thus increased dermal exposure to chromium (VI). Direct
9 mouthing of the Products and indirect hand to mouth exposure to chromium (VI) will occur by
10 touching the Products with subsequent touching of the user's hand to mouth.

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

14 44. Defendants have knowledge that the normal and reasonably foreseeable use of the
15 Product exposes individuals to chromium (VI), and Defendants intend those exposures to
16 chromium (VI) will occur by its deliberate, non-accidental participation in the importation,
17 distribution, sale and offering of the Products to consumers in California

18 45. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
19 Complaint.

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

23 47. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
24 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 (up to a maximum civil penalty amount per
6 violation of \$912,000.00) in accordance with Health and Safety Code § 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: January 29, 2024

BRODSKY SMITH

13 By:  _____

14 Evan J. Smith (SBN242352)
15 Ryan P. Cardona (SBN302113)
16 9595 Wilshire Boulevard, Suite 900
17 Beverly Hills, CA 90212
18 Telephone: (877) 534-2590
19 Facsimile: (310) 247-0160

20 *Attorneys for Plaintiff*