1 2	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113) BRODSKY SMITH	ELECTRONICALLY FILED	
3	9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212	Superior Court of California, County of San Francisco	
4	Telephone: (877) 534-2590 Facsimile: (310) 247-0160	01/29/2024 Clerk of the Court BY: AUSTIN LAM	
5	Attorneys for Plaintiff	Deputy Clerk	
6			
7			
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	COUNTY OF SAN FRANCISCO		
10	GABRIEL ESPINOZA,	Case No.: CGC-24-611936	
11	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
12	vs.	(Violation of Health & Safety Code § 25249.5 et	
13	DICK'S SPORTING GOODS, INC.,	seq.)	
14	AMERICAN SPORTS LICENSING, INC., AMERICAN SPORTS LICENSING, LLC,		
15	Defendants.		
16			
17	Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the following		
18	cause of action in the public interest of the citizens of the State of California.		
19	BACKGROUND OF THE CASE		
20	1. Plaintiff brings this representative action on behalf of all California citizens to		
21	enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at		
22	the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,		
23	"[n]o person in the course of doing business shall knowingly and intentionally expose any		
24	individual to a chemical known to the state to cause cancer or reproductive toxicity without first		
25	giving clear and reasonable warning to such individual". Health & Safety Code § 25249.6.		
26	2. This complaint is a representative action brought by Plaintiff in the public interest		
27	of the citizens of the State of California to enforce the People's right to be informed of the health		
28	hazards caused by exposure to chromium (hexavalent compounds) ("chromium (VI)"), a toxic - 1 -		
	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF		

Î

HEALTH & SAFETY CODE §25249.5

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

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

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

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

- 27 28
- COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF VIOLATION OF HEALTH & SAFETY CODE §25249.5

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

8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
6 65 in accordance with Health and Safety Code § 25249.7(b).

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

- 11
- 12

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

PARTIES

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

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

13. Defendant American Sports Licensing, Inc., through its business, effectively
imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it
implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use
in the State of California. Plaintiff alleges that defendant American Sports Licensing, Inc. is a
"person" in the course of doing business within the meaning of Health & Safety Code sections
25249.6 and 25249.11.

- 3 -

1 14. Defendant American Sports Licensing, LLC, through its business, effectively 2 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it 3 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use 4 in the State of California. Plaintiff alleges that defendant American Sports Licensing, LLC is a 5 "person" in the course of doing business within the meaning of Health & Safety Code sections 6 25249.6 and 25249.11.

7

VENUE AND JURISDICTION

8 15. Venue is proper in the County of San Francisco because one or more of the
9 instances of wrongful conduct occurred and continue to occur in this county and/or because
10 Defendants conducted, and continue to conduct, business in the County of San Francisco with
11 respect to the Products.

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

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

- 23
- -0

STATUTORY BACKGROUND

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

27 28

> COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5

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:

No 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...

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 consumer good, or any exposure that results from receiving a consumer service." (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that "a person in the course of doing business ... shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning."

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

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

a.

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

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

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

27

28

²⁵ 26

Alternatively, a person in the course of doing business may elect to comply with the warning 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.

d. A system of signs, public advertising identifying the system and toll-free 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 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil 6 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

9

7

8

1

2

FACTUAL BACKGROUND

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

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.

27 28 At all times relevant to this action, Defendants have knowingly and intentionally
 exposed users, consumers and/or patients to the Products and the chromium (VI) without first
 giving a clear and reasonable exposure warning to such individuals.

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

10

SATISFACTION OF NOTICE REQUIREMNTS

28. On May 18, 2023, Plaintiff purchased the Products from Dick's Sporting Goods.
At the time of purchase, Defendants did not provide a Proposition 65 exposure warning for
chromium (VI) or any other Proposition 65 listed chemical in a manner consistent with H&S Code
§ 25603.1 as described *supra*.

15 29. The Products were sent to a testing laboratory to determine the chromium (VI)
16 content of the Products.

30. On June 19, 2023, the laboratory provided the results of its analysis. Results of this
test determined the Product exposes users to chromium (VI) (the "Chemical Test Report").

19 31. Plaintiff provided the Chemical Test Report and Products to an analytical chemist
20 to determine if, based on the findings of the Chemical Test Report and the reasonable and
21 foreseeable use of the Products, exposure to chromium (VI) will occur at levels that require
22 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
23 the California Code of Regulations.

32. On June 26, 2023, Plaintiff received from the analytical chemist an exposure
assessment report which concluded that persons in California who use the Products will be exposed
to levels of chromium (VI) that require a Proposition 65 exposure warning.

27 33. On June 26, 2023, Plaintiff gave notice of alleged violation of Health and Safety
28 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to

^{- 7 -}

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

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

17

FIRST CAUSE OF ACTION

(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 distributer, and/or retailer
21 of the Products.

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

- 8 -

continued to knowingly and intentionally expose California users and consumers of the Products
 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.

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

44. Defendants have knowledge that the normal and reasonably foreseeable use of the
Product exposes individuals to chromium (VI), and Defendants intend those exposures to
chromium (VI) will occur by its deliberate, non-accidental participation in the importation,
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 this19 Complaint.

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

23 24

25

26

27

28

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5

. 0 .

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: Evan J. Smith (SBN242352)	
14	Ryan P. Cardona (SBN302113)	
15	9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212	
16	Telephone: (877) 534-2590 Facsimile: (310) 247-0160	
17	Attorneys for Plaintiff	
18		
19		
20		
21		
22		
23		
24		
25		
26 27		
27		
20	- 10 -	
	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5	