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Consumer Protection Group, LLC

FILED
Superior Court of California
County of Los Angeles
08/01/2024
David W. Slayton, Executive Officer / Clerk of Court
By: N. Osollo Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CONSUMER PROTECTION GROUP,
LLC, in the public interest,

PLAINTIFF,

v.

DICKS SPORTING GOODS, INC., AND
DOES 1 TO 50

DEFENDANTS.

CASE NO. 24STCV12457

**PLAINTIFF CONSUMER
PROTECTION GROUP, LLC'S FIRST
AMENDED COMPLAINT FOR
PENALTY AND INJUNCTION**

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

UNLIMITED CIVIL
(Demand exceeds \$25,000)

Plaintiff CONSUMER PROTECTION GROUP, LLC alleges a cause of action against
DICKS SPORTING GOODS, INC., AND DOES 1 TO 50 ("DEFENDANTS").

THE PARTIES

1. Plaintiff, CONSUMER PROTECTION GROUP LLC ("Plaintiff" or "CPG"), is
an organization qualified to do business in the State of California. CPG is a person within the
meaning of Health and Safety Code section 25249.11, subdivision (a). CPG, acting as a private

1 attorney general, brings this action in the public interest as defined under Health and Safety
2 Code section 25249.7, subdivision (d).

3 2. Defendant, DICKS SPORTING GOODS, INC. (“Defendant” or “DSG”) is a
4 Pennsylvania Corporation, doing business in the State of California at all relevant times herein.

5 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
6 under the fictitious names DOES 1 through 50 but will seek leave of this Court to amend the
7 complaint and serve such fictitiously named Defendants once their names and capacities
8 become known.

9 4. Plaintiff is informed and believes, and thereon alleges that Defendant at all times
10 mentioned herein has conducted business within the State of California.

11 5. Upon information and belief, at all times relevant to this action, Defendant was
12 an agent, servant, or employee of the Defendant. In conducting the activities alleged in this
13 Complaint, Defendant was acting within the course and scope of this agency, service, or
14 employment, and was acting with the consent, permission, and authorization of the Defendant.

15 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times the
16 Defendant was a person doing business within the meaning of Health and Safety Code section
17 25249.11, subdivision (b), and that the Defendant had ten (10) or more employees at all
18 relevant times.

19 **JURISDICTION**

20 7. The Court has jurisdiction over this lawsuit pursuant to California Constitution
21 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
22 those given by statute to other trial courts. This Court has jurisdiction over this action pursuant
23 to Health and Safety Code section 25249.7, which allows enforcement of violations of
24 Proposition 65 in any Court of competent jurisdiction.

25 8. This Court has jurisdiction over Defendant named herein because Defendant
26 either resides or is located in this State or are foreign corporations authorized to do business in
27 California, are registered with the California Secretary of State, or who do sufficient business
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1 in California, have sufficient minimum contacts with California, or otherwise intentionally avail
2 themselves of the markets within California through their manufacture, distribution, promotion,
3 marketing, or sale of their products within California to render the exercise of jurisdiction by
4 the California courts permissible under traditional notions of fair play and substantial justice.

5 9. Venue is proper in the County of Los Angeles because one or more of the
6 instances of wrongful conduct occurred, and continues to occur, in the County of Los Angeles
7 and/or because Defendant conducted, and continues to conduct, business in the County of Los
8 Angeles with respect to the consumer product that is the subject of this action.

9 **BACKGROUND AND PRELIMINARY FACTS**

10 10. In 1986, California voters approved an initiative to address growing concerns
11 about exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
12 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed
13 Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking Water and Toxic
14 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.*
15 (“Proposition 65”), helps to protect California’s drinking water sources from contamination, to
16 allow consumers to make informed choices about the products they buy, and to enable persons
17 to protect themselves from toxic chemicals as they see fit.

18 11. Proposition 65 requires the Governor of California to publish a list of chemicals
19 known to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
20 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over 700
21 chemicals and chemical families. Proposition 65 imposes warning requirements and other
22 controls that apply to Proposition 65-listed chemicals.

23 12. All businesses with ten (10) or more employees that operate or sell products in
24 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)
25 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of drinking
26 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and reasonable”
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1 warnings before exposing a person, knowingly and intentionally, to a Proposition 65-listed
2 chemical (*Health & Safety Code* § 25249.6).

3 13. Proposition 65 provides that any person "violating or threatening to violate" the
4 statute may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
5 25249.7. "Threaten to violate" means "to create a condition in which there is a substantial
6 probability that a violation will occur." *Health & Safety Code* § 25249.11(e). Defendant is also
7 liable for civil penalties of up to \$2,500.00 per day per violation, recoverable in a civil action.
8 *Health & Safety Code* § 25249.7(b).

9 14. On January 1, 1988, the Governor of California added Di(2-ethylhexyl)
10 phthalate ("DEHP") to the list of chemicals known to the state to cause cancer. On October 24,
11 2003, the Governor of California added DEHP to the list of chemicals known to the state to
12 cause developmental toxicity, male reproductive toxicity, and female reproductive toxicity.

13 15. Plaintiff identified certain practices of manufacturers and distributors of
14 products bearing DEHP, exposing, knowingly, and intentionally, persons in California to said
15 Proposition 65-listed chemical without first providing clear and reasonable warnings to the
16 exposed persons prior to the time of exposure. Plaintiff later learned that Defendant has
17 engaged in such practice.

18 **SATISFACTION OF PRIOR NOTICE**

19 16. On or about October 5, 2023, Plaintiff gave notice of alleged violations of Health
20 and Safety Code section 25249.6, concerning consumer product exposures, subject to a private
21 action to GoFit, LLC, DSG, and to the California Attorney General, County District Attorneys,
22 and City Attorneys for each County containing a population of at least 750,000 people in whose
23 jurisdiction the violations allegedly occurred, concerning a GoFit 10 lb Kettlebell containing
24 violative amounts of DEHP.

25 17. Before sending the notice of alleged violations, Plaintiff investigated the
26 consumer products involved, the likelihood that such products would cause users to suffer
27 significant exposures to DEHP, and the corporate structure of the Defendant.

18. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the attorney for the noticing party, CPG. The Certificate of Merit stated that the attorney for Plaintiff who executed the certificate had consulted with at least one person with relevant and appropriate expertise who reviewed data regarding the exposures to DEHP the subject Proposition 65-listed chemicals of this action. Based on that information, the attorney for Plaintiff who executed the Certificate of Merit believed there was a reasonable and meritorious case for this private action. The attorney for Plaintiff attached to the Certificate of Merit served on the Attorney General the confidential factual information sufficient to establish the basis of the Certificate of Merit.

19. Plaintiff's notice of alleged violation also included a Certificate of Service and a document titled "The Safe Drinking Water & Toxic Enforcement Act of 1986 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

20. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff gave notice of the alleged violation to the Defendants and the public prosecutors referenced in Paragraph 16.

21. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor any applicable district attorney or city attorney has commenced and is diligently prosecuting an action against the Defendant.

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER PROTECTION GROUP, LLC against DICKS SPORTING GOODS, INC.,
3 and DOES 1-50 for Violations of Proposition 65,
4 The Safe Drinking Water and Toxic Enforcement Act of 1986
5 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

6 **GOFIT 10 LB KETTLEBELL**

7 22. Plaintiff repeats and incorporates by reference paragraphs 1 through 21 of this
8 complaint as though fully set forth herein. The Defendants are and at all times mentioned
9 herein was a manufacturer and/or supplier of the GoFit 10 lb Kettlebell (“Kettlebell”).

10 23. Plaintiff is informed, believes, and thereon alleges that the Kettlebell
11 contains DEHP.

12 24. Defendant knew or should have known that Kettlebell has been identified by the
13 State of California as a chemical known to cause Cancer, developmental toxicity, female
14 reproductive toxicity, and male reproductive toxicity and therefore was subject to Proposition
15 65 warning requirements. Defendant was also informed of the presence of DEHP in the
16 Kettlebell within Plaintiff’s notice of alleged violations further discussed above at
17 Paragraph 16.

18 25. Plaintiff’s allegations regarding the Kettlebell concerning “[c]onsumer products
19 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, storage,
20 consumption, or other reasonably foreseeable use of a consumer good, or any exposure that
21 results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b). The Kettlebell
22 is a consumer product, and, as mentioned herein, exposures to DEHP took place as a result of
23 such normal and foreseeable consumption and use.

24 26. Plaintiff is informed, believes, and thereon alleges that between October 5, 2020,
25 and the present, Defendant knowingly and intentionally exposed California consumers and
26 users of the Kettlebell, which Defendant manufactured, distributed, or sold as mentioned above,
27 to DEHP, without first providing any type of clear and reasonable warning of such to the
28 exposed persons before the time of exposure. Defendant has distributed and sold the Kettlebell

1 in California. Defendant knows and intends that California consumers will use and handle the
2 Kettlebell, thereby exposing them to DEHP. Defendant thereby violated Proposition 65.

3 27. The principal routes of exposure with regard to the Kettlebell are and were
4 through dermal contact and ingestion. Persons sustain exposures by handling or otherwise
5 using the Kettlebell with bare skin, without wearing gloves, or by touching bare skin or mucous
6 membranes with the Kettlebell, as well as through direct and indirect hand to mouth contact,
7 hand to food to mouth, direct contact to food then to mouth, hand to mucous membrane.

8 28. Plaintiff is informed, believes, and thereon alleges that each of Defendant's
9 violations of Proposition 65 as to the Kettlebell have been ongoing and continuous to the date
10 of the signing of this complaint, as Defendant engaged and continue to engage in conduct which
11 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
12 promotion, and sale of the Kettlebell, so that a separate and distinct violation of Proposition 65
13 occurred each and every time a person was exposed to DEHP by the Kettlebell as
14 mentioned herein.

15 29. Plaintiff is informed, believes, and thereon alleges that each violation of
16 Proposition 65 mentioned herein is ever continuing. Plaintiff further alleges and believes that
17 the violations alleged herein will continue to occur into the future.

18 30. Based on the allegations herein, Defendant is liable for civil penalties of up to
19 \$2,500.00 per day per individual exposure to DEHP from the Kettlebell pursuant to Health and
20 Safety Code section 25249.7(b).

21 31. In the absence of equitable relief, the general public will continue to be
22 involuntarily exposed to DEHP from the Kettlebell, creating a substantial risk of irreparable
23 harm. Thus, by committing the acts alleged herein, Defendant has caused irreparable harm for
24 which there is no plain, speedy, or adequate remedy at law.

25 32. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein
26 prior to filing this Complaint.

1 **PRAYER FOR RELIEF**

2 Plaintiff demands against the Defendant as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings for any
4 future sales of the Kettlebell;
5 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
6 3. Costs of suit;
7 4. Reasonable attorney fees and costs; and
8 5. Any further relief that the court may deem just and equitable.

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10 Dated: August 1, 2024

BLACKSTONE LAW, APC

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14 Jonathan M. Genish, Esq.
15 Attorneys for Plaintiff
16 Consumer Protection Group, LLC
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