

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Laralei Schmohl Paras, State Bar No. 203319
Rebecca M. Jackson, State Bar No. 221583
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillsllp.com
rebecca@sevenhillsllp.com

Attorneys for Plaintiff
MY NGUYEN

FILED
San Francisco County Superior Court

NOV 19 2021

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

MY NGUYEN,
Plaintiff,
v.
COMBAT BRANDS, LLC; and DOES 1-30,
inclusive,
Defendants.

Case No. CGC-20-588602
^{(b)(4)}
**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**
Date: November 19, 2021
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. ~~Ethan P. Schulman~~
RICHARD B. ULMER
Complaint Filed: December 23, 2020
Trial Date: None set.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the above-entitled action, Plaintiff My Nguyen and Defendant Combat Brands, LLC, having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 11/19/21

 RL
JUDGE OF THE SUPERIOR COURT
RICHARD B. ULMER

EXHIBIT A

1 Laralei Schmohl Paras, State Bar No. 203319
SEVEN HILLS LLP
2 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
3 Telephone: (415) 926-7247
laralei@sevenhillsllp.com

4 Attorneys for Plaintiff
5 MY NGUYEN

6 Sarah Brite Evans, Star Bar No. 210980
SCHWARTZ SEMERDJIAN CAULEY & EVANS LLP
7 101 West Broadway, Suite 810
San Diego, CA 92101
8 Telephone: (619) 236.8821
sarah@sscelaw.com

9 Attorneys for Defendant
10 COMBAT BRANDS, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION
14

15 MY NGUYEN,

16 Plaintiff,

17 v.

18 COMBAT BRANDS, LLC.; and DOES
19 1-30, inclusive,

20 Defendants.
21

Case No. CGC-20-588602

22 ⁽¹²⁾
23 [PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)
24
25
26
27
28

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff My Nguyen (“**Mr. Nguyen**”)
3 and defendant Combat Brands, LLC (“**Combat Brands**”), with Mr. Nguyen and Combat Brands each
4 individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the
5 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act
6 of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

7 **1.1 The Parties**

8 Mr. Nguyen is a citizen of the state of California seeking to eliminate toxic chemicals in
9 consumer products, to increase public awareness of those chemicals and to promote corporate
10 responsibility. Combat Brands employs ten or more persons and is a person in the course of doing
11 business for purposes of Proposition 65, pursuant to Health & Safety Code § 25249.11(b).

12 **1.2 Consumer Product Description**

13 Mr. Nguyen alleges Combat Brands manufactures, imports, sells or distributes for sale in or
14 into California mini gloves containing diisononyl phthalate (“**DINP**”), including but not limited to,
15 *Ringside Miniature Bag Gloves, SKU MBG RED GTIN 6 09224 979* and gloves containing di(2-
16 ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Ringside Pro Style Boxing Training*
17 *Gloves Kickboxing Muay Thai Gel Sparring Punching Bag Mitts SKU BG16 BK/PK S/M-P GTIN 7*
18 *99637 30307 2 ASIN B00XM27YBG*, without providing the health hazard warning that Mr. Nguyen
19 alleges is required by Proposition 65. Mini gloves are referred to hereinafter as the “**mini gloves.**”
20 Gloves are referred to hereinafter as the “**gloves.**” Mini gloves and gloves are collectively referred to
21 herein as the “**Products.**” On December 20, 2013, DINP was listed as a chemical known to the State
22 of California to cause cancer. On October 24, 2003, DEHP was listed as a chemical known to the
23 State of California to cause birth defects and reproductive toxicity.

24 **1.3 Notices of Violation**

25 On August 19, 2020, Mr. Nguyen served Combat Brands, the California Attorney General,
26 and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”),
27 alleging Combat Brands violated Proposition 65 when it failed to warn its customers with
28 nationwide distribution and consumers in California that the mini gloves can expose users to DINP.

1 On March 12, 2021, Mr. Nguyen served Combat Brands, Amazon.com, Inc., the California Attorney
2 General, and the requisite public enforcement agencies with a Supplemental 60-Day Notice of
3 Violation (“**Supplemental Notice**”), alleging that Combat Brands and Amazon.com, Inc. violated
4 Proposition 65 when they failed to warn their customers with nationwide distribution and consumers
5 in California that the gloves can expose users to DEHP. The Notice and the Supplemental Notice
6 are collectively referred to hereinafter as the (“**Notices**”). To the best of the Parties’ knowledge, no
7 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set
8 forth in the Notices.

9 **1.4 Complaint**

10 On December 23, 2020, Mr. Nguyen commenced the instant action, naming Combat Brands
11 as a defendant for the violations of Proposition 65 alleged in the Notice. On September 14, 2021,
12 Mr. Nguyen filed a First Amended Complaint (“**Complaint**”) for the violations of Proposition 65
13 alleged in the Notices.

14 **1.5 No Admission**

15 Combat Brands denies the factual and legal allegations contained in the Notices and
16 Complaint and maintains all products it sold or distributed for sale in California or caused to be sold
17 or distributed for sale in California, including the Products, have been, and are, in compliance with
18 all laws. Nothing in this Consent Judgment shall constitute or be construed as, nor shall compliance
19 with this Consent Judgment constitute or be construed as, an admission by Combat Brands of any
20 fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however,
21 diminish or otherwise affect Combat Brands’ obligations, responsibilities, and duties under this
22 Consent Judgment.

23 **1.6 Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction
25 over Combat Brands as to the allegations contained in the Complaint; venue is proper in San
26 Francisco County; and the Court has jurisdiction to enter and enforce the provisions of this Consent
27 Judgment, pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

28 ///

1 1.7 The term "Execution Date" shall mean the date on which all parties have signed this
2 Consent Judgment.

3 **1.8 Effective Date**

4 The term "Effective Date" shall mean the date on which the Court approves this Consent
5 Judgment and enters Judgment pursuant to its terms.

6 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

7 **2.1 Reformulation Commitment**

8 Commencing on the Effective Date and continuing thereafter, all Products Combat Brands
9 manufactures, imports, sells or distributes for sale in or into California to consumers in California or
10 through customers with nationwide distribution or e-commerce sales, that do not meet the
11 Reformulation Standard for Reformulated Products, as defined by Section 2.2, shall be accompanied
12 by a clear and reasonable warning pursuant to Section 2.3.

13 **2.2 Reformulation Standard**

14 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products
15 which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), di-n-butyl phthalate ("DBP"),
16 diisononyl phthalate ("DINP"), butyl benzyl phthalate ("BBP"), di-isodecyl phthalate ("DIDP") and
17 di-n-hexyl phthalate ("DnHP"), contain any or all such chemicals each in a maximum concentration
18 of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the
19 State of California, a federal agency, or a nationally recognized accrediting organization. For
20 purposes of compliance with this reformulation standard, testing samples shall be prepared and
21 extracted using Consumer Product Safety Commission ("CPSC") methodology CPSC-CH-
22 C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or
23 other methodologies utilized by federal or state government agencies to determine phthalate content
24 in a solid substance.

25 ///

26 ///

27 ///

28 ///

1 **2.3 Clear and Reasonable Warnings**

2 For all Products that do not meet the Reformulation Standard in Section 2.2, Combat Brands
3 shall provide clear and reasonable warnings in accordance with this Section, pursuant to Title 27
4 California Code of Regulations § 25600, et seq. Each warning shall be prominently placed with such
5 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
6 to be read and understood by an ordinary individual under customary conditions before purchase or
7 use and shall be provided in a manner such that it is clearly associated with the specific Product to
8 which the warning applies.

9 **(a) Warning.** The Warning for mini gloves shall consist of the following statement:

10 **⚠ WARNING:** This product can expose you to chemicals including
11 DINP, which are known to the State of California to
12 cause cancer. For more information go to
 www.P65Warnings.ca.gov.

13 The Warning for gloves shall consist of the following statement:

14 **⚠ WARNING:** This product can expose you to chemicals including
15 DEHP, which is known to the State of California to
16 cause birth defects and other reproductive harm. For
 more information go to www.P65Warnings.ca.gov.

17 **(b) Short-Form Warning.** Combat Brands may, but is not required to, use the following
18 short-form warning as set forth in this subsection 2.3(b) ("**Short-Form Warning**"), and subject to the
19 additional requirements in Sections 2.5 and 2.6, as follows:

20 For mini gloves:

21 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

22 For gloves:

23 **⚠ WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

24 **(c) Foreign Language Requirement.** Where a consumer product sign, label or shelf tag
25 used to provide a warning includes consumer information in language(s) other than English, the
26 warning must also be provided in the other language(s) in addition to English.

27 ///

28 ///

2.4 Product Warnings

Combat Brands shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For the purpose of this agreement, "Product label" means a display of written, printed or graphic material that is printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to Section 2.3(a) or (b) must print the word "WARNING:" in all capital letters and in bold font. The warning symbol to the left of the word "WARNING:" must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the labeling does not use the color yellow, then the symbol may be in black and white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the Products.

2.5 Internet Warnings

If, after the Effective Date, Combat Brands sells Products via the internet, through its own website or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, Combat Brands shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying, or requiring the warning to be prominently displayed on third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word "WARNING" given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

///

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code § 25249.7(b), Combat Brands agrees to pay a civil
4 penalty of \$3,500 within five (5) days of the Effective Date. Combat Brands' civil penalty payment
5 will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five
6 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
7 Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by Mr. Nguyen.
8 Combat Brands shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount
9 of \$2,625; and (b) "My Nguyen" in the amount of \$875. Mr. Nguyen's counsel shall deliver to
10 OEHHA and Mr. Nguyen their respective portions of the penalty payment.

11 **3.2 Reimbursement of Attorneys' Fees and Costs**

12 Mr. Nguyen and his counsel offered to resolve the allegations in the Notice without reaching
13 terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties
14 finalized the other material settlement terms, they negotiated and reached an accord on the amount of
15 reimbursement to be paid to Mr. Nguyen's counsel, under general contract principles and the private
16 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
17 performed through the mutual execution and reporting of this Consent Judgment to the Office of the
18 California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and
19 costs on appeal, if any. Within five (5) days of the Effective Date, Combat Brands shall issue a
20 check in the amount of \$25,000 payable to "Seven Hills LLP" for all fees and costs incurred
21 investigating, bringing this matter to Combat Brands' attention, litigating, negotiating a settlement in
22 the public interest, reporting to Office of the California Attorney General and obtaining the Court's
23 approval of its terms pursuant to Section 9.

24 ///
25 ///
26 ///
27 ///
28 ///

1 **3.3 Payments**

2 All payments payable and due under this Consent Judgment shall be delivered to Mr.
3 Nguyen’s counsel at the following address:

4 Seven Hills LLP
5 Attn: Laralei Paras
6 4 Embarcadero Center, Suite 1400
7 San Francisco, CA 94111

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Mr. Nguyen’s Release of Proposition 65 Claims**

9 Mr. Nguyen, acting on his own behalf, in the public interest, and on behalf of his past and
10 current attorneys and successors an assignees (“**Releasors**”) releases Combat Brands and its past and
11 present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
12 employees, and attorneys and each entity to whom Combat Brands directly or indirectly distributes
13 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
14 customers, retailers, including, without limitation, Amazon.com, Inc., franchisers, cooperative
15 members, licensors and licensees (“**Releasees**”) for any violations arising under Proposition 65 for
16 unwarned exposures to DINP and/or DEHP from Products manufactured or distributed into the State
17 of California by Combat Brands prior to the Execution Date, as set forth in the Notice. Compliance
18 with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Combat
19 Brands with respect to the alleged or actual failure to warn about exposures to DINP and/or DEHP
20 from Products manufactured or distributed by Combat Brands and offered for sale in California after
21 the Execution Date.

22 **4.2 Mr. Nguyen’s Individual Release of Claims**

23 Mr. Nguyen, in his individual capacity only and *not* in his representative capacity, also
24 provides a release to Combat Brands and Releasees which shall be effective as a full and final accord
25 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
26 damages, losses, claims, liabilities and demands of Mr. Nguyen of any nature, character or kind,
27 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to
28 DINP and/or DEHP in Products manufactured or distributed into the State of California by Combat

1 Brands prior to the Execution Date. Nothing in this section shall affect Mr. Nguyen’s right to
2 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
3 Combat Brands’ Products.

4 **4.3 Combat Brands’ Release of Mr. Nguyen**

5 Combat Brands, on behalf of itself, its past and current agents, representatives, attorneys,
6 successors, and assignees, hereby waives any and all claims against Mr. Nguyen and his attorneys
7 and other representatives, for any and all actions taken or statements made (or those that could have
8 been taken or made) by Mr. Nguyen and his attorneys and other representatives, whether in the course
9 of investigating claims or otherwise seeking to enforce Proposition 65 against him in this matter with
10 respect to the Products

11 **5. COURT APPROVAL**

12 Pursuant to California Health and Safety Code § 25249.7(f)(4), Mr. Nguyen shall file a
13 noticed motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ
14 their best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and
15 to obtain judicial approval of their settlement in a timely manner. For purposes of this section, “best
16 efforts” shall include, at a minimum, supporting the motion for approval, responding to any third-
17 party objection, and appearing at the hearing before the Court if so requested.

18 **6. SEVERABILITY**

19 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
20 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
21 remaining provisions shall not be adversely affected.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
25 rendered inapplicable by reason of law generally, or as to the Products, then Combat Brands may
26 provide Mr. Nguyen with written notice of any asserted change in the law, and shall have no further
27 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
28

1 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Combat
2 Brands from its obligation to comply with any pertinent state or federal law or regulation.

3 **8. NOTICE**

4 Unless specified herein, all correspondence and notice required by this Consent Judgment
5 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or
6 (ii) a recognized overnight courier to any Party by the other at the following addresses:

7 For Combat Brands:

For Mr. Nguyen:

8 Doug Skeens, President
9 COMBAT BRANDS, LLC
10 15850 W. 108th Street
Lenexa, KS 66215

Laralei Paras, Partner
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

11 Any Party may, from time to time, specify in writing to the other Party a change of address to which
12 all notices and other communications shall be sent.

13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by portable document format
15 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,
16 shall constitute one and the same document.

17 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 Mr. Nguyen and his counsel agree to comply with the reporting form requirements
19 referenced in California Health and Safety Code § 25249.7(f).

20 **11. ENTIRE AGREEMENT**

21 This Consent Judgment contains the sole and entire agreement and understanding of the
22 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
24 therein. There are no warranties, representations, or other agreements between the Parties except as
25 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
26 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
27 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
28 exist or to bind any of the Parties hereto.

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
4 any party and the entry of a modified Consent Judgment by the Court thereon.

5 **13. AUTHORIZATION**


6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
8 Consent Judgment.

9 **AGREED TO:**

AGREED TO:

10 Date: 9/21/2021

Date: _____

11
12 By: 

By: _____

13 My Nguyen

Doug Skeens, President
Combat Brands, LLC

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
4 any party and the entry of a modified Consent Judgment by the Court thereon.

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
8 Consent Judgment.

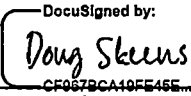
9 **AGREED TO:**

AGREED TO:

10 Date: _____

Date: 9/29/2021

11
12 By: _____
13 My Nguyen

11
12 By: 
13 Doug Skeens, President
14 Combat Brands, LLC