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**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT**

By: R. Smith, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR,

Plaintiff,

v.

APEX MEDICAL CORPORATION and
DOES 1-150,

Defendants.

Case No. CIV 1300478

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

NATURE OF THE ACTION

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2 1. This Complaint is a representative action brought by plaintiff LAURENCE
3 VINOCUR, in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of Di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in certain vinyl/PVC pill and medication organizers/dispensers
6 manufactured, distributed and/or otherwise sold by defendants in California. This Complaint
7 is also a representative action brought by plaintiff LAURENCE VINOCUR, in the public
8 interest of the citizens of the State of California, to enforce the People’s right to be informed of
9 the presence of Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), a toxic chemical found
10 in certain foam pillows also manufactured, distributed and/or otherwise sold by defendants in
11 California.

12 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the
14 course of doing business shall knowingly and intentionally expose any individual to a
15 chemical known to the state to cause cancer or reproductive toxicity without first giving clear
16 and reasonable warning to such individual. . . .” (*Cal. Health & Safety Code* § 25249.6.)

17 3. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical
18 known to cause birth defects and other reproductive harm. DEHP became subject to the
19 warning requirement one year later and was therefore subject to the “clear and reasonable
20 warning” requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c);
21 *Cal. Health & Safety Code* § 25249.8.)

22 4. On October 28, 2011, California identified and listed TDCPP as a chemical known
23 to cause cancer. TDCPP became subject to the “clear and reasonable warning” requirements of
24 Proposition 65 one year later on October 28, 2012. *Cal. Code Regs.*, tit. 27, § 27001(b); *Health &*
25 *Safety Code* §§ 25249.8 and 25249.10(b).

26 5. DEHP shall hereinafter be referred to as the “LISTED CHEMICAL 1” and
27 TDCPP shall hereinafter be referred to as “LISTED CHEMICAL 2”. DEHP and TDCPP shall
28 hereinafter collectively be referred to as “LISTED CHEMICALS.”

1 manufactures, distributes, and/or offers the TDCPP PRODUCTS and DEHP PRODUCTS for
2 sale or use in the State of California.

3 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
4 doing business within the meaning of California Health & Safety Code Section 25249.11.

5 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
6 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
7 engage in the process of research, testing, designing, assembling, fabricating, and/or
8 manufacturing, one or more of the TDCPP PRODUCTS and DEHP PRODUCTS for sale or use
9 in the State of California.

10 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
11 doing business within the meaning of California Health & Safety Code Section 25249.11.

12 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
13 transport one or more of the TDCPP PRODUCTS and DEHP PRODUCTS to individuals,
14 businesses or retailers for sale or use in the State of California.

15 18. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
16 business within the meaning of California Health & Safety Code Section 25249.11.

17 19. RETAIL DEFENDANTS offer the TDCPP PRODUCTS and DEHP PRODUCTS
18 for sale to individuals in the State of California.

19 20. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
20 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
21 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis
22 alleges, that each of the fictitiously named defendants is responsible for the acts and
23 occurrences herein alleged. When ascertained, their true names shall be reflected in an
24 amended complaint.

25 21. APEX MEDICAL CORPORATION, MANUFACTURER DEFENDANTS,
26 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,
27 collectively be referred to hereinafter as "DEFENDANTS".
28

1 VENUE AND JURISDICTION

2 22. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
3 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred, and continues to occur, in the
5 County of Marin and/or because DEFENDANTS conducted, and continue to conduct,
6 business in this County with respect to the TDCPP PRODUCTS and DEHP PRODUCTS.

7 23. The California Superior Court has jurisdiction over this action pursuant to
8 California Constitution Article VI, Section 10, which grants the Superior Court "original
9 jurisdiction in all causes except those given by statute to other trial courts." The statute under
10 which this action is brought does not specify any other basis of subject matter jurisdiction.

11 24. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff's information and good faith belief that each defendant is a person, firm, corporation
13 or association that either are citizens of the State of California, have sufficient minimum
14 contacts in the State of California, or otherwise purposefully avail themselves of the California
15 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
16 California courts consistent with traditional notions of fair play and substantial justice.

17 FIRST CAUSE OF ACTION

18 **(Violation of Proposition 65 - Against All Defendants)**

19 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 24, inclusive.

21 26. In passing Proposition 65, the citizens of the State of California expressed their
22 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986
23 that they must be "informed about exposures to chemicals that cause cancer, birth defects, or
24 other reproductive harm."

25 27. Proposition 65 states, "[n]o person in the course of doing business shall
26 knowingly and intentionally expose any individual to a chemical known to the state to cause
27 cancer or reproductive toxicity without first giving clear and reasonable warning to such
28 individual" Health & Safety Code § 25249.6.

1 28. On November 21, 2012, a sixty-day notice of violation (“60-Day Notice”),
2 together with the requisite Certificate of Merit, was provided to APEX MEDICAL
3 CORPORATION and various public enforcement agencies stating that as a result of the APEX
4 MEDICAL CORPORATION’s manufacture, distribution and sales of the PRODUCTS,
5 purchasers and users in the State of California are being exposed to DEHP resulting from the
6 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
7 first having been provided with a “clear and reasonable warning” regarding such toxic
8 exposures.

9 29. On August 16, 2014, supplemental sixty-day notice of violation (“Supplemental
10 60-Day Notice”), together with the requisite Certificate of Merit, was provided to APEX
11 MEDICAL CORPORATION and various public enforcement agencies stating that as a result of
12 the APEX MEDICAL CORPORATION’s manufacture, distribution and sales of the TDCPP
13 PRODUCTS and DEHP PRODUCTS, purchasers and users in the State of California are being
14 exposed to TDCPP and DEHP resulting from the reasonably foreseeable uses of the TDCPP
15 PRODUCTS and DEHP PRODUCTS, without the individual purchasers and users first having
16 been provided with a “clear and reasonable warning” regarding such toxic exposures.

17 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering
18 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section
19 25249.6 and DEFENDANTS’ manufacture, distribution, and/or offering of the TDCPP
20 PRODUCTS and DEHP PRODUCTS for sale or use in violation of California Health & Safety
21 Code Section 25249.6 appear to have continued to occur beyond APEX MEDICAL
22 CORPORATION’s receipt of plaintiff’s 60-Day Notice. Plaintiff further alleges and believes
23 that such violations will continue to occur into the future.

24 31. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
25 enforcement agencies have failed to commence and diligently prosecute a cause of action
26 against DEFENDANTS under Proposition 65.

27 32. The DEHP PRODUCTS manufactured, distributed, and/or offered for sale or use
28 in California by DEFENDANTS, contain the LISTED CHEMICAL 1 and the TDCPP

1 PRODUCTS manufactured, distributed, and/or offered for sale or use in California by
2 DEFENDANTS, contain the LISTED CHEMICAL 2.

3 33. DEFENDANTS knew or should have known that the DEHP PRODUCTS
4 contained the LISTED CHEMICAL 1 and the TDCPP PRODUCTS contained LISTED
5 CHEMICAL 2.

6 34. The LISTED CHEMICALS are present in or on the TDCPP PRODUCTS and
7 DEHP PRODUCTS in such a way as to expose individuals to the LISTED CHEMICALS, as
8 such exposure is defined by 27 CCR Section 25602(b), through dermal contact and/or ingestion
9 during or as a consequence of the reasonably foreseeable use of the TDCPP PRODUCTS and
10 DEHP PRODUCTS.

11 35. DEFENDANTS knew or should have known that the reasonably foreseeable use
12 of the TDCPP PRODUCTS and DEHP PRODUCTS exposes individuals to the LISTED
13 CHEMICALS through dermal contact and/or ingestion.

14 36. DEFENDANTS' participation in the manufacture, distribution and/or offer for
15 sale or use of TDCPP PRODUCTS and DEHP PRODUCTS to individuals in the State of
16 California was deliberate and non-accidental.

17 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
18 consumers and/or other individuals in the State of California who were or who could become
19 exposed to the LISTED CHEMICALS during the reasonably foreseeable use of the TDCPP
20 PRODUCTS and DEHP PRODUCTS.

21 38. Contrary to the express policy and statutory prohibition of Proposition 65,
22 individuals exposed to the LISTED CHEMICALS through dermal contact and/or ingestion
23 resulting from the reasonably foreseeable use of the TDCPP PRODUCTS and DEHP
24 PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning", have suffered,
25 and continue to suffer, irreparable harm, for which harm they have no other plain, speedy or
26 adequate remedy at law.

