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ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 21 2015

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,  
11 Plaintiff,  
12 vs.  
13 MSC INDUSTRIAL SUPPLY  
14 COMPANY, MSC INDUSTRIAL  
15 DIRECT CO., INC., and MSC  
16 SERVICES CORP. t/a JUPITER  
17 PNEUMATICS UNIVERSAL AIR  
18 SOLUTIONS,  
19 Defendants.

CASE NO.:  
JUDGE **RG 15732848**  
DEPT.:  
  
COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF  
  
(Violation of Health & Safety Code §25249.5  
*et seq.*)

19 Plaintiff Anthony Ferreiro, by and through his attorneys, alleges the following cause of  
20 action in the public interest of the citizens of the State of California.

21 BACKGROUND OF THE CASE

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

BY FAX

1           2.       This complaint is a representative action brought by Plaintiff in the public interest  
2 of the citizens of the State of California to enforce the People’s right to be informed of the health  
3 hazards caused by exposures to Di-isodecyl phthalate (“DIDP”) and Diisononyl phthalate  
4 (“DINP”), toxic chemicals found in air hoses, sold, and/or distributed by defendants MSC  
5 Industrial Supply Co., MSC Industrial Direct Co., Inc., and MSC Services Corp. t/a Jupiter  
6 Pneumatics Universal Air Solutions (collectively referred to herein as, “MSC” and/or  
7 “Defendants”) in California.

8           3.       DIDP is a harmful chemical known to the State of California to cause  
9 reproductive toxicity. DIDP has been listed on the Proposition 65 list of chemicals known to  
10 reproductive toxicity since August 20, 2007 and it has come under the purview of Proposition 65  
11 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
12 25249.8 & 25249.10(b).

13           4.       DINP is a harmful chemical known to the State of California to cause cancer.  
14 DINP has been listed on the Proposition 65 list of chemicals known to cause cancer since  
15 December 20, 2013 and it has come under the purview of Proposition 65 regulations since that  
16 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

17           5.       Proposition 65 requires all businesses with ten (10) or more employees that  
18 operate within California or sell products therein to comply with Proposition 65 regulations.  
19 Included in such regulations is the requirement that businesses must label any Proposition 65  
20 listed chemical with a “clear and reasonable” warning before knowingly or intentionally  
21 exposing it to any person.

22           6.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
23 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
24 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
25 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety  
26 Code § 25249.7.

27           7.       Plaintiff alleges that Defendants distribute, manufacture, produce, import, sell,  
28 and/or offer for sale, without the required warning, air hoses in California containing DIDP and

1 DINP. These products include, but are not limited to, *3/8" 1Dx25' PVC Air Hose Assembly,*  
2 *Color: red, UPC# 5002503710JP, MSC Part# 82729344, JUP-R0380-25-CF, Size: 275 X 565 X*  
3 *25* (the "Product").

4 8. Defendants' failure to warn consumers, workers, and other individuals in  
5 California of the health hazards associated with exposure to DIDP and DINP in conjunction with  
6 the sale, manufacture, and/or distribution of the Product is a violation of Proposition 65 and  
7 subjects Defendants to the enjoinder and civil penalties described herein.

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

10 10. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
11 Defendants to provide purchasers or users of the Product with the required warnings related to  
12 the dangers and health hazards associated with exposure to DIDP and/or DINP pursuant to  
13 Health and Safety Code § 25249.7(a).

#### 14 PARTIES

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

19 12. Defendant MSC Industrial Supply Co., a New York Corporation, is one of the  
20 largest industrial equipment distributors in the world, and through that business effectively  
21 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in California, or  
22 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product  
23 for sale or use in the State of California. MSC Industrial Supply Co. can be served at 75 Maxess  
24 Road, Melville, NY 11747-3151. MSC Industrial Supply Co. is a person in the course of doing  
25 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

26 13. Defendant MSC Industrial Direct Co., Inc., a New York Corporation, is one of the  
27 largest industrial equipment distributors in the world, and through that business effectively  
28 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in California, or

1 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product  
2 for sale or use in the State of California. MSC Industrial Direct Co., Inc. maintains a registered  
3 agent for service of process at c/o Corporation Service Company, 80 State Street, Albany, NY  
4 12207. MSC Industrial Direct Co., Inc. is a person in the course of doing business within the  
5 meaning of Health & Safety Code sections 25249.6 and 25249.11.

6 14. Defendant MSC Services Corp. t/a Jupiter Pneumatics Universal Air Solutions, a  
7 New York Corporation, is one of the largest industrial equipment distributors in the world, and  
8 through that business effectively manufactures, imports, distributes, sells, and/or offers the  
9 Product for sale or use in California, or it implies by its conduct that it manufactures, imports,  
10 distributes, sells, and/or offers the Product for sale or use in the State of California. MSC  
11 Services Corp. t/a Jupiter Pneumatics Universal Air Solutions maintains a registered agent for  
12 service of process at c/o Corporation Service Company, 80 State Street, Albany, NY 12207.  
13 MSC Services Corp. t/a Jupiter Pneumatics Universal Air Solutions is a person in the course of  
14 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

15 15. Upon information and belief, Plaintiff avers that each Defendant acted as an  
16 employee, servant, or agent of each other Defendant at all times relevant to this action. Plaintiff  
17 further avers that in conducting the activities alleged in this Complaint, all Defendants acted  
18 within the scope of their agency or similarly situated relationship as toward one another.  
19 Therefore all Defendants acted with consent, permission, and authorization of each other in  
20 relation to all acts related to the scope of this Complaint.

21 16. Upon information and belief, Plaintiff avers that at all relevant times herein, each  
22 Defendant was a person doing business within the meaning of Health and Safety Code §  
23 25249.11(b) and that each and every Defendant had ten (10) or more employees at all relevant  
24 times.

#### 25 VENUE AND JURISDICTION

26 17. Venue is proper in the County of Alameda, because one or more of the instances  
27 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants  
28

1 conducted, and continue to conduct, business in the County of Alameda with respect to the  
2 Product.

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

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

15 **SATISFACTION OF NOTICE REQUIREMENTS**

16 20. On May 21, 2015, Plaintiff gave notice to, among others, Defendants of  
17 alleged violations of Health and Safety Code § 25249.6, concerning the exposure of California  
18 citizens to DIDP and DINP without proper warning from their handling, acquisition and use of  
19 the Product, subject to a private action to the Defendants and to the California Attorney  
20 General's office and the offices of the County District attorneys and City Attorneys for each city  
21 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

22 21. Such notice complied with all procedural requirements of Proposition 65  
23 including the attachment of a Certificates of Merit affirming that Plaintiff's counsel had  
24 consulted with at least one person with relevant and appropriate expertise who reviewed relevant  
25 data regarding DIDP and DINP exposure, and that counsel believed there was meritorious and  
26 reasonable cause for a private action.

27 22. After receiving Plaintiff's notices, and to Plaintiff's best information and belief,  
28 none of the noticed appropriate public enforcement agencies have commenced and diligently

1 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged  
2 violations which are the subject of Plaintiff's notice of violation.

3 23. Plaintiff is commencing this action more than sixty (60) days from the date of his  
4 amended notice to Defendants, as required by law.

5 **FIRST CAUSE OF ACTION**

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

7 24. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 23 of  
8 this complaint as though fully set forth herein.

9 25. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,  
10 and/or retailer of the Product.

11 26. The Product contains DIDP and DINP, hazardous chemicals found on the  
12 Proposition 65 list of a chemical known to be hazardous to human health.

13 27. The Product does not comply with the Proposition 65 warning requirements.

14 28. Plaintiff, based on his best information and belief, avers that at all relevant times  
15 hereto, and at least since April 6, 2015 continuing until the present, that Defendants have  
16 continued to knowingly and intentionally expose California users and consumers of the Product  
17 to DIDP and DINP without providing required warnings under Proposition 65.

18 29. The exposures that are the subject of this notice result from the purchase,  
19 acquisition, handling and recommended use of the product. Consequently, the primary route of  
20 exposure to these chemicals is through skin exposure to DINP and DIDP through the user's  
21 hands is likely to occur when the user manipulates the hose. Exposure is also possible through  
22 leaching of DINP and DIDP into the compressed air within the hose. Vapor phase DINP and  
23 DIDP from the hose that has leached into the compressed air line can be discharged when a  
24 pneumatic tool is actuated or when the air line from the tool is disconnected. This discharged  
25 DINP and DIDP vapor can be ingested by the user. If the Jupiter Pneumatics Air Hose is used in  
26 a construction setting, fine construction dust e.g. sheetrock, sawdust can absorb vapor phase  
27 DINP and DIDP that is discharged from the hose and this dust can potentially be resuspended in  
28 the air and ingested. Finally, while mouthing of the product does not seem likely, some amount

1 of exposure through ingestion can occur by handling the product with subsequent touching of the  
2 users hand to mouth.

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

6 31. Defendants have knowledge that the normal and reasonably foreseeable use of the  
7 Product exposes individuals to DIDP and DINP, and Defendants intend that exposures to DIDP  
8 and DINP will occur by their deliberate, non-accidental participation in the manufacture,  
9 importation, distribution, sale and offering of the Product to consumers in California

10 32. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
11 Complaint without success.

12 33. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
13 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per  
14 violation.

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

17 **PRAYER FOR RELIEF**

18  
19 WHEREFORE, Plaintiff demands judgment against the Defendant and requests the  
20 following relief:

- 21 A. That the court assess civil penalties against each and every Defendant in  
22 the amount of \$2,500 per day for each violation in accordance with Health  
23 and Safety Code § 25249.7(b);
- 24 B. That the court preliminarily and permanently enjoin all Defendants  
25 mandating Proposition 65 compliant warnings on the Products;
- 26 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 27 D. That the court grant any further relief as may be just and proper.
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Dated: August 21, 2015

BRODSKY & SMITH, LLC

By:  \_\_\_\_\_

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