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ENJOINED
FILED
ALAMEDA COUNTY

DEC 15 2016

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 COMPLETE MEDICAL SUPPLIES,
15 INC.,

16 Defendant.

Case No.: *R6-16842507*

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

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

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), brings this representative
21 action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water
22 and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq*
23 ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business
24 shall knowingly and intentionally expose any individual to a chemical known to the state to
25 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
26 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 exposure to Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate
4 (DINP), toxic chemicals found in *Complete Medical Inflatable Vinyl Invalid Rings* and *Complete*
5 *Medical Vinyl Bedside Mats* sold and/or distributed by defendant Complete Medical Supplies,
6 Inc. (“Complete Medical Supplies” or “Defendant”) in California.

7 3. DEHP and DINP are harmful chemicals known to the State of California to cause
8 cancer and/or reproductive toxicity. On January 1, 1988, and on December 20, 2013, the State of
9 California listed DEHP and DINP, respectively, as chemicals known to the State to cause cancer
10 and each chemical has come under the purview of Proposition 65 regulations since that time.
11 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On
12 October 24, 2003, the State of California listed DEHP as a chemical known to cause
13 reproductive toxicity.

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

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

24 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
25 and/or offers for sale, without the required warning, *Complete Medical Vinyl Invalid Rings*, and
26 *Complete Medical Vinyl Bedside Mats* (“Product” or “Products”) in California containing DEHP
27 and/or DINP.

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

3 14. 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 15. This Court has jurisdiction over Defendant because it is either a citizen of the
9 State of California, has sufficient minimum contacts with the State of California, is registered
10 with the California Secretary of State as foreign corporations authorized to do business in the
11 State of California, and/or has otherwise purposefully availed itself of the California market.
12 Such purposeful availment has rendered the exercise of jurisdiction by California courts
13 consistent and permissible with traditional notions of fair play and substantial justice.

14 **SATISFACTION OF NOTICE REQUIREMENTS**

15 16. On July 8, 2016, and on July 15, 2016, Plaintiff gave notice of alleged violation of
16 Health and Safety Code § 25249.6 (the “Notices”) to Complete Medical Supplies concerning the
17 exposure of California citizens to DEHP and DINP contained in the Products without proper
18 warning, subject to a private action to Complete Medical Supplies and to the California Attorney
19 General’s office and the offices of the County District attorneys and City Attorneys for each city
20 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

26 18. After receiving the Notices, and to Plaintiff’s best information and belief, none of
27 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
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1 a cause of action against Complete Medical Supplies under Proposition 65 to enforce the alleged
2 violations which are the subject of Plaintiff's notice of violation.

3 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
4 Notice to Complete Medical Supplies, as required by law.

5 **FIRST CAUSE OF ACTION**

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

7 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
8 this complaint as though fully set forth herein.

9 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
10 and/or retailer of the Product.

11 22. The Products contain DEHP and/or DINP, hazardous chemicals found on the
12 Proposition 65 list of chemicals known to be hazardous to human health.

13 23. The Products do not comply with the Proposition 65 warning requirements.

14 24. Plaintiff, based on his best information and belief, avers that at all relevant times
15 herein, and at least since May 19, 2016 continuing until the present, that Complete Medical
16 Supplies has continued to knowingly and intentionally expose California users and consumers of
17 the Products to DEHP and/or DINP without providing required warnings under Proposition 65.

18 25. The exposures that are the subject of the Notices 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 dermal exposure. With respect to the invalid ring,
21 Dermal exposure through the user's hands is possible during routine handling of the inflatable
22 invalid ring. If used without clothing, the product will come into contact with the user's gluteal
23 area and dermal exposure is possible. If used while clothed, DINP from the vinyl invalid ring
24 can contaminate clothing or cloth furniture that comes into contact with the vinyl ring. These
25 contaminated articles will subsequently be an indirect source of DINP exposure. The product
26 can be expected to emit gas phase DINP into the air over the lifetime of the product. This gas
27 phase DINP can potentially be inhaled or can be absorbed to dust that can be resuspended and
28 potentially ingested. If the vinyl invalid ring is stored in a drawer or carrier bag with other items,

1 DINP that leaches from the vinyl may contaminate other articles contained within the drawer or
2 carrier bag that are subsequently handled by people. Direct ingestion of DINP will occur
3 through mouthing of the product during inflation of the vinyl ring. Finally, some amount of
4 exposure through ingestion can occur by handling the product with subsequent touching of the
5 user's hand to mouth.

6 26. Similarly, with respect to the vinyl mat, dermal exposure is possible as the tri fold
7 mat will be handled with bare hands when it is unfolded and placed into position beside the
8 user's bed or folder for storage. The vinyl covering is likely to be in contact with either bare,
9 exposed skin or the user's clothing in the event of a fall. The bedside mat can be expected to
10 emit gas phase DEHP into the air over the lifetime of the product. This gas phase DEHP can
11 potentially be inhaled or can be absorbed to dust that can be resuspended and potentially
12 ingested. If the bedside mat is stored in a drawer or transported in a carrier, DEHP that leaches
13 from the bedside mat may contaminate other articles contained within the drawer or carrier that
14 are subsequently handled by people. Finally, while mouthing of the product does not seem
15 likely, some amount of exposure through ingestion can occur by handling the product with
16 subsequent touching of the user's hand to mouth.

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

20 28. Defendant has knowledge that the normal and reasonably foreseeable use of the
21 Products exposes individuals to DEHP and DINP, and Defendant intends that exposures to
22 DEHP and DINP will occur by their deliberate, non-accidental participation in the manufacture,
23 importation, distribution, sale and offering of the Products to consumers in California

24 29. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
25 Complaint.

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

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


PRAYER FOR RELIEF

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

- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: December 15, 2016

BRODSKY & SMITH, LLC

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