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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV - 9 2016

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

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

12 ANTHONY FERREIRO,  
13 Plaintiff,  
14 vs.  
15 ADVANCE MEDICAL  
16 MANUFACTURING LLC d/b/a  
17 CROWN MEDICAL PRODUCTS,  
18 Defendant.

Case No.:

2016038441

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

19 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the  
20 following cause of 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.

2. This complaint is a representative action brought by Plaintiff in the public interest  
of the citizens of the State of California to enforce the People's right to be informed of the health

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF - VIOLATION OF  
HEALTH & SAFETY CODE §25249.5

1 hazards caused by exposure to Diisononyl phthalate (“DINP”), a toxic chemical found in bolster  
2 rolls and foam wedges manufactured, sold and/or distributed by defendant Advance Medical  
3 Manufacturing LLC d/b/a Crown Medical Products (“Crown Medical” or “Defendant”) in  
4 California.

5 3. DINP is a harmful chemical known to the State of California to cause cancer. On  
6 December 20, 2013, the State of California listed DINP as a chemical known to cause cancer and  
7 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.  
8 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

19 6. Plaintiff alleges that Defendant manufactures, distributes, sells, and/or offers for  
20 sale in California, without the required warning, bolster rolls and wedges containing DINP.  
21 These products include, but are not limited to, (a) *BSSN Vinyl Covered Bolster Rolls*, Item No.  
22 10860H, and (b) *Cando Foam Wedges*, Item No. 312001 (the “Products”).

23 7. Defendant’s failure to warn consumers, workers, and other individuals in  
24 California of the health hazards associated with exposure to DINP in conjunction with the sale,  
25 manufacture, and/or distribution of the Products is a violation of Proposition 65 and subjects  
26 Defendant to the enjoinder and civil penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).

1           9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
2 Defendant to provide purchasers or users of the Products with the required warnings related to  
3 the dangers and health hazards associated with exposure to DINP pursuant to Health and Safety  
4 Code § 25249.7(a).

5   **PARTIES**

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

10          11. Defendant Crown Medical designs, manufactures, and sells therapeutic sleep  
11 systems, cushions and pillows. Through its business, Crown Medical effectively manufactures,  
12 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or  
13 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
14 Products for sale or use in the State of California.

15          12. Upon information and belief, Plaintiff avers that at all relevant times herein,  
16 Crown Medical is a “person” in the course of doing business within the meaning of Health &  
17 Safety Code sections 25249.6 and 25249.11.

18   **VENUE AND JURISDICTION**

19          13. Venue is proper in the County of Alameda because one or more of the instances  
20 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
21 conducted, and continues to conduct, business in the County of Alameda with respect to the  
22 Products.

23          14. This Court has jurisdiction over this action pursuant to California Constitution  
24 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
25 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
26 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
27 this Court has jurisdiction over this lawsuit.

28

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

7                                 **SATISFACTION OF NOTICE REQUIREMNTS**

8           16. On September 7, 2016, Plaintiff gave notice of alleged violation of Health and  
9 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California  
10 citizens to DINP contained in the Products without proper warning, subject to a private action to  
11 Defendant and to the California Attorney General's office and the offices of the County District  
12 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
13 wherein the herein violations allegedly occurred.

14           17. The Notice complied with all procedural requirements of Proposition 65 including  
15 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
16 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
17 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a  
18 private action.

19           18. After receiving the Notice, and to Plaintiff's best information and belief, none of  
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
21 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which  
22 are the subject of Plaintiff's notice of violation.

23           19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
24 Notice to Defendant, as required by law.

25                                 **FIRST CAUSE OF ACTION**

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

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

1           21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
2 and/or retailer of the Products.

3           22. The Products contain DINP, a hazardous chemical found on the Proposition 65  
4 list of a chemical known to be hazardous to human health.

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

6           24. Plaintiff, based on his best information and belief, avers that at all relevant times  
7 herein, and at least since May 19, 2016 continuing until the present, that Defendant has  
8 continued to knowingly and intentionally expose California users and consumers of the Products  
9 to DINP without providing required warnings under Proposition 65.

10          25. As it pertains to the bolster rolls, the exposures that are the subject of this notice  
11 result from the purchase, acquisition, handling and recommended use of the product.  
12 Consequently, the primary route of exposure to these chemicals is through dermal absorption.  
13 Users may potentially be exposed to DINP by dermal absorption through direct skin contact  
14 when the vinyl cover of the bolster roll is handled with bare hands or used in contact with bare  
15 skin on the user's body. Clothing in contact with the vinyl cover are likely to absorb DINP while  
16 the bolster roll is used. The contaminated articles of clothing will continue to be a source of  
17 dermal transfer after the bolster is used. The vinyl cover can be expected to emit gas phase  
18 DINP into the air over the lifetime of the product. This gas phase DINP can potentially be  
19 inhaled or can be absorbed to dust that can be resuspended and potentially ingested. Finally,  
20 while mouthing of the product does not seem likely, some amount of exposure through ingestion  
21 can occur by touching the product, with subsequent touching of the user's hand to mouth.

22          26. As it pertains to the foam wedges, the exposures that are the subject of this notice  
23 result from the purchase, acquisition, handling and recommended use of the product.  
24 Consequently, the primary route of exposure to these chemicals is through dermal absorption  
25 through direct skin contact. Users may potentially be exposed to DINP by dermal absorption  
26 through direct skin contact when the vinyl cover of the foam wedge is handled with bare hands  
27 or worn in contact with bare skin on the user's body. Clothing in contact with the vinyl cover are  
28 likely to absorb DINP while the foam wedge is used. The contaminated articles to clothing will

1 continue to be a source of dermal transfer after the foam wedge is used. The vinyl cover can be  
2 expected to emit gas phase DINP into the air over the lifetime of the product. This gas phase  
3 DINP can potentially be inhaled or can be absorbed to dust that can be resuspended and  
4 potentially ingested. Finally, while mouthing of the product does not seem likely, some amount  
5 of exposure through ingestion can occur by touching the product, with subsequent touching of  
6 the users hand to mouth.

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

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

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

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

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

20  
21 **PRAYER FOR RELIEF**

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

- 24 A. That the court assess civil penalties against Defendant in the amount of  
25 \$2,500 per day for each violation in accordance with Health and Safety  
26 Code § 25249.7(b);  
27

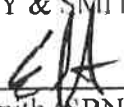
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- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: November 9, 2016

BRODSKY & SMITH, LLC

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