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ENDORSED
FILED
ALAMEDA COUNTY

MAY 17 2017

CLERK OF THE SUPERIOR COURT
By [Signature]
JAMIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 KAREN CALACIN,

12 Plaintiff,

13 v.

14 ARTISTIC PRODUCTS, LLC,

15 Defendant.

Case No.: **RG17860577**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

17 Plaintiff Karen Calacin ("Plaintiff"), by and through her attorneys, alleges the following
18 cause of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People's right to be informed of the health
28

1 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in desk pads
2 manufactured, sold and/or distributed in California by defendant Artistic Products, LLC
3 (“Artistic Products” or “Defendant”) in California.

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

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

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

18 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
19 and/or offers for sale in California, without the required warning, Artistic Products’ desk pads,
20 including but not limited to the Krystal View Clear Desk Pads, SKU No. 0 30615 62009 6, and
21 the Microban Executive Desk Pad, SKU No. 030615 13841 6 (“Product” or “Products”), that
22 contain DINP.

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

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

PARTIES

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

11. Defendant Artistic Products is a manufacturer and retailers of desk pads and desktop accessories. Through its business, Artistic Products effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

12. Defendant Artistic Products is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

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

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

15. This Court has jurisdiction over Defendant because it is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered

1 with the California Secretary of State as foreign corporations authorized to do business in the
2 State of California, and/or has otherwise purposefully availed itself of the California market.
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On December 21, 2016, Plaintiff gave notice of alleged violation of Health and
7 Safety Code § 25249.6 (the "Notice") to Artistic Products concerning the exposure of California
8 citizens to DINP contained in the Product without proper warning, subject to a private action to
9 Artistic Products and to the California Attorney General's office and the offices of the County
10 District attorneys and City Attorneys for each city with a population greater than 750,000
11 persons wherein the herein violations allegedly occurred.

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

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

21 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
22 Notice to Artistic Products, as required by law.

23 **FIRST CAUSE OF ACTION**

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

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

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

1 22. The Product contains DINP, a hazardous chemical found on the Proposition 65
2 list of chemicals known to be hazardous to human health.

3 23. The Product does not comply with the Proposition 65 warning requirements.

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since November 1, 2016, continuing until the present, that Artistic Products
6 has continued to knowingly and intentionally expose California users and consumers of the
7 Product to DINP without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of the Notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is through dermal exposure. Dermal exposure to DINP is possible
11 when the user handles, manipulates, or works on the desk pad in contact with bare skin of the
12 hands and forearm. Should the surface become wet due to liquids or cleaning, aqueous HMWP
13 skin permeation rates have been reported to be faster than neat HMWP permeation. Clothing
14 worn in contact with the desk pad as well as items placed on the desk pad are likely to absorb
15 DINP that leaches from the desk pad. The contaminated articles will continue to be a source of
16 dermal exposure to DINP, and in the case of food items, ingestion of DINP is possible. It has
17 been reported that the emission rate of phthalates from surfaces is substantially enhanced in the
18 presence of particles where the particles rapidly sorb phthalates from the gas phase, allowing
19 more to be emitted from the vinyl surface. Finally, while mouthing of the product does not seem
20 likely, phthalates absorbed to soils/dust can be suspended in the air and ingested directly or
21 ingested by touching the dust with subsequent hand to mouth contact, contaminated writing
22 implements such as pens/pencils can be inadvertently mouthed, and some amount of exposure
23 through ingestion can occur by handling the product with subsequent touching of the user's hand
24 to mouth.

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

28

1 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
2 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
3 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
4 sale and offering of the Product to consumers in California

5 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
6 Complaint.

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

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

11
12 **PRAYER FOR RELIEF**

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

- 15 A. That the court assess civil penalties against Defendant in the amount of
16 \$2,500 per day for each violation in accordance with Health and Safety
17 Code § 25249.7(b);
18 B. That the court preliminarily and permanently enjoin Defendant mandating
19 Proposition 65 compliant warnings on the Product;
20 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
21 D. That the court grant any further relief as may be just and proper.
22

23 Dated: May 16, 2017

BRODSKY & SMITH, LLC

24 By: 

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Attorneys for Plaintiff