

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

GABRIEL ESPINOSA,

Plaintiff,

v.

TECHNICRAFT PRODUCTS, INC.,

Defendant.

Case No.: *Rb-178796-2*

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

BY FAX

Plaintiff Gabriel Espinosa ("Plaintiff" or "Espinosa"), by and through his attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

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

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 Diisononyl phthalate (DINP), a toxic chemical found in tire  
4 inflators manufactured, distributed and/or offered for sale by defendant Technicraft Products,  
5 Inc. ("Technicraft Products" or "Defendant") in California.

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

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

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

20          6.       Plaintiff alleges that Defendant manufactured, distributed and/or offered for sale  
21 in California, without the required warning, tire inflators, including but not limited to UPC No. 7  
22 32554 35001 9 ("Product" or "Products") that 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. He brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant Technicraft Products, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Product 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 Technicraft 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 with the California Secretary of State as foreign corporations authorized to do business in the

1 State of California, and/or has otherwise purposefully availed itself of the California market.  
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On March 10, 2017, Plaintiff gave notice of alleged violation of Health and Safety  
6 Code § 25249.6 (the "Notice") to Technicraft Products concerning the exposure of California  
7 citizens to DINP contained in the Product without proper warning, subject to a private action to  
8 Technicraft Products and to the California Attorney General's office and the offices of the  
9 County District attorneys and City Attorneys for each city with a population greater than 750,000  
10 persons wherein the herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

26 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
27 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 February 11, 2017, continuing until the present, that Technicraft  
6 Products has continued to knowingly and intentionally expose California users and consumers of  
7 the 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 skin exposure. Skin exposure to DINP through the user's  
11 hands can occur when the user manipulates the hose. If the hose is manipulated while wet, DINP  
12 skin permeation rates from aqueous solutions are faster than neat HMWP permeation. The  
13 plastic hose can be expected to emit gas phase DINP over the lifetime of the Product. If the  
14 Ultra Instant Bike Tire Inflator Sealer is stored or transported in a carrier DINP that leaches from  
15 the hose may contaminate other articles contained within these closed spaces that are  
16 subsequently handled, worn, or ingested by people. Leaching of DINP into the pressurized gas,  
17 solvents, and/or sealing chemicals dispensed from the can into the hose may be enhanced if non-  
18 polar chemicals are dispensed from the can content due to the lipophilic of DINP. Nonpolar  
19 chemicals, can diffuse into the hose increasing the free volume, thus raising the diffusion rate of  
20 the phthalate out of PVC. Vapor phase DINP from the hose that has leached into the pressurized  
21 gas line can be discharged when a hose line is disconnected from the tire valve. This discharged  
22 DINP can be directly ingested by the user or may be absorbed to the user's hands. Finally, while  
23 mouthing of the product does not seem likely, some amount of exposure through ingestion can  
24 occur by handling the product with subsequent touching of the user's hand to mouth.

25           26.     Plaintiff, based on his 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

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

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

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

30. 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: August 9, 2017

BRODSKY &amp; SMITH, LLC

By: Evan J. Smith  
Evan J. Smith (SBN242352)  
Ryan P. Cardona (SBN302113)  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*