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**ENDORSED
FILED
ALAMEDA COUNTY
MAY 19 2017**

**CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

MONSTER, INC. and VANCO
INTERNATIONAL, LLC,

Defendants.

Case No.: RG17849566

**AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

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

BY FAX

Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), 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 amended complaint is a representative action brought by Plaintiff in the
2 public interest of the citizens of the State of California to enforce the People's right to be
3 informed of the health hazards caused by exposure to Diisononyl phthalate (DINP), a toxic
4 chemical found in Monster Ethernet cables sold and/or distributed by defendants Monster, Inc.
5 ("Monster") and Vanco International LLC ("Vanco", referred to herein collectively with Monster
6 as "Defendants") in California.

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

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

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

21 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,
22 and/or offer for sale, without the required warning, Monster Ethernet cables, including but not
23 limited to, Monster 25 ft. CAT SE Network Cables, UPC No. 050644623691 ("Product" or
24 "Products") in California containing DINP.

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

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

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

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 16. On June 23, 2016, Plaintiff gave notice of alleged violation of Health and Safety
15 Code § 25249.6 (the “Notice¹”) to Monster concerning the exposure of California citizens to
16 DINP contained in the Product without proper warning, subject to a private action to Monster
17 and to the California Attorney General’s office and the offices of the County District attorneys
18 and City Attorneys for each city with a population greater than 750,000 persons wherein the
19 herein violations allegedly occurred.

20 17. The Notice and the Amended Notice (collectively referred to hereinafter as, the
21 “Notices”) complied with all procedural requirements of Proposition 65 including the attachment
22 of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at least one person
23 with relevant and appropriate expertise who reviewed relevant data regarding DINP exposure,
24 and that counsel believed there was meritorious and reasonable cause for a private action.

25
26 ¹ On May 5, 2017, the Notice was amended (the “Amended Notice”) and sent to Vanco in order to
27 provide Vanco with notice of alleged violation of Health and Safety Code § 25249.6 concerning the
28 exposure of California citizens to DINP contained in the Product without proper warning.

1 mouthing of the product does not seem likely, some amount of exposure through ingestion can
2 occur by touching the product, with subsequent touching of the user's hand to mouth.

3 26. 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 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
7 Product exposes individuals to DINP, and Defendants intend that exposures to DINP will occur
8 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
9 sale and offering of the Product to consumers in California

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

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

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
18 following relief:

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

26
27 Dated: May 19, 2017

BRODSKY & SMITH, LLC

28 By: 

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