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ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 30 2018

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

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

10  
11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 v.  
14 DRYCASE, LLC.,  
15 Defendant.

Case No.: **PG18891165**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

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17 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the  
18 following 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

BY FAX

1 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in DryCase  
2 waterproof duffle bags/backpacks manufactured, distributed and/or sold in California by  
3 defendant DryCase, LLC (“DryCase” 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 manufactures, distributes, sells and/or offers for  
19 sale in California, without a requisite exposure warning, DryCase waterproof duffle  
20 bags/backpacks (“Product” or “Products”) that expose persons to DINP.

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

25 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendant to provide purchasers or users of the Product with the required warnings related to the

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety  
2 Code § 25249.7(a).

3 **PARTIES**

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

8 11. Defendant DryCase, through its business, effectively manufactures, imports,  
9 distributes, sells and/or offers the Products for sale or use in the State of California, or it implies  
10 by its conduct that it manufactures, imports, distributes, sells and/or offers the Product for sale or  
11 use in the State of California.

12 12. Plaintiff alleges that defendant DryCase is a “person” in the course of doing  
13 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

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

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

24 15. This Court has jurisdiction over Defendant because it is either a citizen of the  
25 State of California, has sufficient minimum contacts with the State of California, is registered  
26 with the California Secretary of State as foreign corporations authorized to do business in the  
27 State of California, and/or has otherwise purposefully availed itself of the California market.  
28

1 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
2 consistent and permissible with traditional notions of fair play and substantial justice.

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 16. On August 23, 2017, Plaintiff gave notice of alleged violation of Health and  
5 Safety Code § 25249.6 (the “Notice”) to DryCase concerning the exposure of California citizens  
6 to DINP contained in the Products without proper warning, subject to a private action to DryCase  
7 and to the California Attorney General’s office and the offices of the County District attorneys  
8 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
9 herein violations allegedly occurred.

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

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

2           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
3 herein, and at least since July 10, 2017, continuing until the present, that DryCase has continued  
4 to knowingly and intentionally expose California users and consumers of the Product to DINP  
5 without providing required warnings under Proposition 65.

6           25.     The exposures that are the subject of the Notice result from the purchase,  
7 acquisition, handling and recommended use of the product. Consequently, the primary route of  
8 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to  
9 DINP by dermal absorption through direct skin contact with the dry bag during routine use when  
10 the shiny black material comes into contact with bare hands. If the shiny black material becomes  
11 wet or is handled with wet hands, aqueous HMWP skin permeation rates have been reported to  
12 be faster than neat HMPW permeation. The product can be expected to emit gas phase DINP  
13 into the air over the lifetime of the product. DINP that leaches from the shiny black material  
14 may contaminate items contained within the dry bag that are subsequently handled, worn in  
15 direct contact with skin, mouthed, or ingested by the user. If the dry bag is stored or transported  
16 in a carrier, DINP that leaches from the shiny black material may contaminate other articles  
17 contained within the storage area or carrier that are subsequently handled, worn, mouthed, or  
18 ingested by the user. Finally, while mouthing of the product does not seem likely, some amount  
19 of exposure through ingestion can occur by touching the product with subsequent touching of the  
20 user's hand to mouth.

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

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

28

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

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

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

7 **PRAYER FOR RELIEF**

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

- 10 A. That the court assess civil penalties against Defendant in the amount of  
11 \$2,500 per day for each violation in accordance with Health and Safety  
12 Code § 25249.7(b);
- 13 B. That the court preliminarily and permanently enjoin Defendant mandating  
14 Proposition 65 compliant warnings on the Product;
- 15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 16 D. That the court grant any further relief as may be just and proper.

17 Dated: January 29, 2018

BRODSKY & SMITH, LLC

18 By:   
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