

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

5 *Attorneys for Plaintiff*

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**MAY 30 2019**

**CLERK OF THE SUPERIOR COURT**  
**By ALICIA ESPINOZA**  
*Deputy*

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 HECTOR VELARDE,

11 Plaintiff,

12 vs.

13 URBAN OUTFITTERS, INC.,

14 Defendant.

Case No.: **RG19020933**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

15 Plaintiff Hector Velarde ("Plaintiff"), by and through his attorneys, alleges the following  
16 cause of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People's right to be informed of the health  
26 hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in Urban  
27 Outfitters backpacks sold and/or distributed by defendant Urban Outfitters, Inc. ("Urban  
28 Outfitters" or "Defendant") in California.

3. DINP is a harmful chemical known to the State of California to cause cancer. On December 20, 2013, the State of California listed DINP as a chemical known to the State to cause cancer and it has come under the purview of Proposition 65 regulations since that time.

Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

6. Plaintiff alleges that Defendant distributes and/or offers for sale in California, without a requisite exposure warning, Urban Outfitters backpacks (the “Products”) that expose persons to DINP.

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

8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 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 Products with required warnings related to the dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code § 25249.7(a).

## PARTIES

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

5           11.     Defendant Urban Outfitters, through its business, effectively imports, distributes,  
6 sells, and/or offers the Products for sale or use in the State of California, or it implies by its  
7 conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of  
8 California.

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

11                               **VENUE AND JURISDICTION**

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

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

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

27                               **SATISFACTION OF NOTICE REQUIREMENTS**

1           16.     On March 16, 2018, Plaintiff gave notice of alleged violation of Health and Safety  
2 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to  
3 DINP contained in the Products without proper warning, subject to a private action to Defendant  
4 and to the California Attorney General’s office and the offices of the County District attorneys  
5 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
6 herein violations allegedly occurred.

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

12           18.     After receiving the Notice, and to Plaintiff’s best information and belief, none of  
13 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
14 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which  
15 are the subject of the Notice. On March 14, 2019, the Parties entered into a tolling agreement to  
16 toll the statute fourteen days (the “Tolling Agreement”). On March 28, 2019, the Parties  
17 extended the Tolling Agreement to May 1, 2019. Thereafter, on April 29, 2019, the Parties  
18 extended the Tolling Agreement a second time to May 31, 2019.

19           19.     Plaintiff is commencing this action more than sixty (60) days from the date of the  
20 Notice to Defendant, as required by law, and prior to the expiration of the Tolling Agreement.

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 Products contain 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 September 27, 2017, continuing until the present, that Defendant has  
4 continued to knowingly and intentionally expose California users and consumers of the Product  
5 to DINP 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. The Product can be expected to emit  
9 gas phase DINP into the air and accumulate DINP at the surface over the lifetime of the Product.  
10 Users may potentially be exposed to DEHP by dermal absorption through direct skin contact  
11 with the Product during routine use when the Product is grasped, opened, or manipulated with  
12 bare hands. DEHP may also be absorbed by the user's clothes when the Product is worn over the  
13 shoulders using the shoulder straps and subsequently these contaminated clothes will be a source  
14 of DEHP dermal exposure. If the Product is stored or transported in a carrier, DEHP that leaches  
15 from the item may contaminate other articles contained within these closed spaces that are  
16 subsequently handled, worn, mouthed, or ingested by the user. Finally, while direct mouthing of  
17 the Product does not seem likely, some amount of exposure through ingestion can occur by  
18 touching the Product with subsequent touching of the user's hand to mouth.

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

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

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

28

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: May 30, 2019

BRODSKY &amp; SMITH, LLC

By: 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*