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ENDORSED
FILED
ALAMEDA COUNTY
JUL 31 2018

8 *Attorneys for Plaintiff*

CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 MEDICAL DEPOT, INC.,
14 Defendant.

Case No.: *RF* 8914924
**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5 et
seq.)**

15 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the
16 following cause of action in the public interest of the citizens of the State of California.

BY FAX

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 Drive
27 Universal bather pouches sold and/or distributed by defendant Medical Depot, Inc. (“Medical
28 Depot”) in California.

1 intentionally expose California users and consumers of the Products to DINP without providing
2 required warnings under Proposition 65.

3 25. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, handling and recommended use of the Product. Consequently, the primary route of
5 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
6 DINP by dermal absorption through direct skin contact with the black vinyl mesh during routine
7 use when the item is grasped, opened, or manipulated with bare hands. If the black vinyl mesh
8 becomes wet, such as when used in a swimming pool, or is handled with wet hands, aqueous
9 HMWP skin permeation rates have been reported to be faster than neat HMWP permeation.
10 DINP can contaminate the surface of items stored in the black vinyl mesh pocket of the bather
11 pouch that are subsequently handled, worn or held in direct contact with skin, mouthed, or
12 ingested by the user. If the bather pouch is stored or transported in a carrier DINP that leaches
13 from the black vinyl mesh may contaminate other articles contained within these closed spaces
14 that are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing
15 of the product does not seem likely, some amount of exposure through ingestion can occur by
16 touching the product with subsequent touching of the user's hand to mouth.

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

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

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

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

