1 2 3 4	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113) BRODSKY & SMITH, LLC 9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160	ENDORSED FILED ALAMEDA COUNTY JUL 3 1 2018		
5	Attorneys for Plaintiff CLERK OF THE SUPERIOR COUR.			
6		By Lanette Buffin, Deputy		
7	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
8				
9	COUNTY OF ALAMEDA Case No.:			
0	ANTHONY FERREIRO,	COMPLAINT FOR CIVIL PENALTIES AND		
1	Plaintiff,	INJUNCTIVE RELEIF		
2	vs. (Violation of Health & Safety Code §25249.			
.3	MEDICAL DEPOT, INC.,	seq.)		
4	Defendant.			
5	Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the			
6	following cause of action in the public interest of the citizens of the State of California.			
7	BACKGROUND OF THE CASE			
8	1. Plaintiff brings this representative action on behalf of all California citizens to			
9	enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified			
0	at the Health and Safety Code § 25249.5 et seq. ("Proposition 65"), which reads, in relevant part,			
1	"[n]o person in the course of doing business shall knowingly and intentionally expose any			
2	individual to a chemical known to the state to cause cancer or reproductive toxicity without first			
3	giving clear and reasonable warning to such individual". Health & Safety Code § 25249.6.			
.4	2. This complaint is a representative action brought by Plaintiff in the public interest			
5	of the citizens of the State of California to enforce the People's right to be informed of the health			
6	hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in Drive			
7	Universal bather pouches sold and/or distributed by defendant Medical Depot, Inc. ("Medical			
8	Depot") in California.			
	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF – VIOLATION OF HEALTH & SAFETY CODE §25249.5			

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

- 4. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to it.
- 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 Medical Depot manufacture, distribute, sell and/or offer for sale in California, without a requisite exposure warning, Drive Universal bather pouches (the "Products") that expose persons to DINP.
- 7. Medical Depot'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 Medical Depot to the enjoinment and civil penalties described herein.
- 8. Plaintiff seeks civil penalties against Medical Depot 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 Medical Depot 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

- 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 Medical Depot, through its business, effectively manufactures, imports, distributes, sells, and/or offers the Products 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 Products for sale or use in the State of California.
- 12. Plaintiff alleges that Medical Depot 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 Medical Depot conducted, and continues to conduct, business in the County of Alameda with respect to the Products.
- 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 Medical Depot 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 State of California, and/or has otherwise purposefully availed itself of the California market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

SATISFACTION OF NOTICE REQUIREMENTS

herein, and at least since January 3, 2018, that Medical Depot has continued to knowingly and

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27 28 intentionally expose California users and consumers of the Products to DINP without providing required warnings under Proposition 65.

- 25. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users may potentially be exposed to DINP by dermal absorption through direct skin contact with the black vinyl mesh during routine use when the item is grasped, opened, or manipulated with bare hands. If the black vinyl mesh becomes wet, such as when used in a swimming pool, or is handled with wet hands, aqueous HMWP skin permeation rates have been reported to be faster than neat HMWP permeation. DINP can contaminate the surface of items stored in the black vinyl mesh pocket of the bather pouch that are subsequently handled, worn or held in direct contact with skin, mouthed, or ingested by the user. If the bather pouch is stored or transported in a carrier DINP that leaches from the black vinyl mesh may contaminate other articles contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user's hand to mouth.
- 26. Plaintiff, based on his best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to Product purchasers and users or until this known toxic chemical is removed from the Product.
- 27. Medical Depot has knowledge that the normal and reasonably foreseeable use of the Products exposes individuals to DINP, and Medical Depot intends that exposures to DINP will occur by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Products 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, Medical Depot is liable for a maximum civil penalty of \$2,500 per day per violation.

	II .		
1	30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically		
2	authorized to grant injunctive relief in favor of Plaintiff and against Medical Depot.		
3	PRAYER FOR RELIEF		
4	WHEREFORE, Plaintiff demands judgment against Medical Depot and requests the		
5	following relief:		
6	A.	That the court assess civil penalties against Medical Depot in the amount	
7		of \$2,500 per day for each violation in accordance with Health and Safety	
8		Code § 25249.7(b);	
9	В.	That the court preliminarily and permanently enjoin Medical Depot	
10		mandating Proposition 65 compliant warnings on the Product;	
11	C.	That the court grant Plaintiff reasonable attorney's fees and costs of suit.	
12	D.	That the court grant any further relief as may be just and proper.	
13 14	Dated: July 31, 2018	BRODSK & SMITH, LLC	
15		Ву:	
16		Evan J. Smith (SBN242352) Ryan P. Cardona (SBN302113)	
17		9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212	
18		Telephone: (877) 534-2590	
19		Facsimile: (310) 247-0160	
20		Attorneys for Plaintiff	
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