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ALAMEDA COUNTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,

12 vs.

13 BRIGGS MEDICAL SERVICE
14 COMPANY, OFFICEMAX
15 INCORPORATED,

16 Defendants.

Case No.: **RG19005991**

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People's right to be informed of the health
27 hazards caused by exposure diisononyl phthalate (DINP), a toxic chemical found in DMS
28 inflatable seat cushions sold and/or distributed by defendants Briggs Medical Service Company

1 (“Briggs Medical”) and OfficeMax Incorporated (“OfficeMax”) (collectively, “Defendants”) in
2 California.

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

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

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

17 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in
18 California, without a requisite exposure warning, DMS inflatable seat cushions (the “Products”)
19 that expose users to DINP.

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

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

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

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. Defendants Briggs Medical, through its business, effectively manufactures,
9 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or
10 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the
11 Products for sale or use in the State of California. Plaintiff alleges that defendant Briggs Medical
12 is a “person” in the course of doing business within the meaning of Health & Safety Code
13 sections 25249.6 and 25249.11.

14 12. Defendants OfficeMax, through its business, effectively imports, distributes, sells,
15 and/or offers the Products for sale or use in the State of California, or it implies by its conduct
16 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of
17 California. Plaintiff alleges that defendant OfficeMax is a “person” in the course of doing
18 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

19 **VENUE AND JURISDICTION**

20 13. Venue is proper in the County of Alameda because one or more of the instances
21 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
22 conduct, and continue to conduct, business in the County of Alameda with respect to the
23 Products.

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

1 21. Defendants have, at all times mentioned herein, acted as either a manufacturer,
2 distributor, and/or retailer of the Product.

3 22. The Products contain DINP, a hazardous chemical found on the Proposition 65
4 list of chemicals known to be hazardous to human health.

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

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since July 11, 2018, continuing until the present, that Defendants have
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DINP without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of the Notice result from the purchase,
11 acquisition, handling and recommended use of the Product. Consequently, the primary route of
12 exposure to these chemicals is through dermal exposure. Dermal exposure through the user's
13 hands is possible during positioning and manipulation of the Product. During normal expected
14 use, the Product will be in contact with the user's buttocks and the back of the user's legs and
15 will be in contact with either bare, exposed skin or the user's clothing. In the case of bare,
16 exposed skin, dermal exposure is possible. DINP from the Product can absorb to the user's
17 clothing or the furniture it is placed upon and the DINP contaminated articles of clothing and/or
18 furniture will continue to be a source of dermal DINP transfer after the Product is removed. If
19 the Product is stored or transported in a carrier, DINP that leaches from the Product may
20 contaminate other articles contained within these closed spaces are subsequently handled, worn,
21 mouthed, or consumed. Finally, while mouthing of the Product does not seem likely, some
22 amount of exposure through ingestion can occur by handling the Product with subsequent
23 touching of the user's hand to mouth.

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

27 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
28 Product exposes individuals to DINP, and Defendants intend that exposures to DINP will occur

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
2 sale and offering of the Products to consumers in California

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

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

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
11 following relief:

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

19 Dated: February 7, 2019

BRODSKY & SMITH, LLC

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