

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

8 *Attorneys for Plaintiff*

ELECTRONICALLY
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Superior Court of California,
County of San Francisco

06/28/2021
Clerk of the Court
BY: ANGELICA SUNGA
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 JORDAN OUTDOOR ENTERPRISES,
15 LTD., THE HOME DEPOT, INC.,

16 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

CGC-21-593154
(Violation of Health & Safety Code § 25249.5 et
seq.)

17 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the following
18 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 at
22 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 hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in RealTree
EZ hangers sold and/or distributed by defendant Jordan Outdoor Enterprises, Ltd. (“Jordan

1 Outdoor”) and defendant The Home Depot, Inc. (“Home Depot”) (collectively, the “Defendants”)
2 in 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 cause
5 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
6 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
17 25249.7.

18 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
19 without a requisite exposure warning, RealTree EZ hangers (the “Products”) that expose persons
20 to DINP.

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

25 8. Plaintiff seeks civil penalties against Defendants for their 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 Defendants to provide purchasers or users of the Products with required warnings related to the

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

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

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

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

14 13. Defendant Home Depot, 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 that
16 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
17 Plaintiff alleges that defendant Home Depot is a "person" in the course of doing business within
18 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

19 **VENUE AND JURISDICTION**

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

24 15. 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 enforcement
27 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
28 jurisdiction over this lawsuit.

1 30. Plaintiff is commencing this action more than sixty (60) days from the date of the
2 Notice to Defendants, as required by law.

3 **FIRST CAUSE OF ACTION**

4 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

5 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of
6 this Complaint as though fully set forth herein.

7 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
8 of the Products.

9 33. The Products contain DINP, a hazardous chemical found on the Proposition 65 list
10 of chemicals known to be hazardous to human health.

11 34. The Products do not comply with the Proposition 65 warning requirements.

12 35. Plaintiff, based on his best information and belief, avers that at all relevant times
13 herein, and at least since September 29, 2020, continuing until the present, that Defendants have
14 continued to knowingly and intentionally expose California users and consumers of the Products
15 to DINP without providing required warnings under Proposition 65.

16 36. The exposures that are the subject of the Notice result from the purchase,
17 acquisition, handling and recommended use of the Products. Consequently, the primary route of
18 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
19 DINP by dermal absorption through direct skin contact with the Products with bare hands. Finally,
20 while mouthing of the Products does not seem likely, some amount of exposure through ingestion
21 can occur by touching the Products with subsequent touching of the user's hand to mouth.

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

25 38. Defendants have knowledge that the normal and reasonably foreseeable use of the
26 Products exposes individuals to DINP, and Defendants intend that exposures to DINP will occur
27 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
28 the Products to consumers in California

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

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

5 41. 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 Defendants.

7 **PRAYER FOR RELIEF**

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

10 A. That the court assess civil penalties against each defendant in the amount of \$2,500
11 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
12 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

13 B. That the court preliminarily and permanently enjoin Defendants mandating
14 Proposition 65 compliant warnings on the Products;

15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
16 amount of \$50,000.00.

17 D. That the court grant any further relief as may be just and proper.

18 Dated: June 28, 2021

BRODSKY SMITH

19 By:  _____

20 Evan J. Smith (SBN242352)
21 Ryan P. Cardona (SBN302113)
22 9595 Wilshire Boulevard, Suite 900
23 Beverly Hills, CA 90212
24 Telephone: (877) 534-2590
25 Facsimile: (310) 247-0160

26 *Attorneys for Plaintiff*