1 2 3 4 5 6	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113) BRODSKY & SMITH 9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160 Attorneys for Plaintiff	ELECTRONICALLY FILED Superior Court of Californic County of San Francisco 01/14/2022 Clerk of the Court BY: EDWARD SANTOS	
7	SUPERIOR COURT OF T	THE STATE OF CALIFORNIA	
8	COUNTY OF	SAN FRANCISCO	
9	GABRIEL ESPINOZA,	Case No.: CGC21595959	
10	Plaintiff,	FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
11	VS.	(Violation of Health & Safety Code § 25249.5 et	
12	MONKEYSPORTS, INC.,	seq.)	
13	Defendant.		
14	Plaintiff Cabriel Egginoza ("Plaintiff") by and through his atternova, alleges the fallowing		
15	Plaintiff Gabriel Espinoza ("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  1. Plaintiff brings this representative action on behalf of all California citizens to		
18			
19	enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at		
20	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.  This First Amended Complaint ("FAC") is a representative action brought by		
24	2. This First Amended Complaint ("FAC") is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right		
25	to be informed of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP),		
26		d/or distributed by defendant Monkeysports, Inc.	
27	("Monkeysports" or "Defendant") in Californ		
28	( Monkeysports of Defendant ) in Camoin		

- 3. DEHP is a harmful chemical known to the State of California to cause cancer and reproductive toxicity. On January 1, 1988, the State of California listed DEHP 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). On October 24, 2003, the State of California listed DEHP as a chemical known to cause reproductive toxicity.
- 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 that will create an exposure above safe harbor levels with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to any such listed chemical.
- 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) 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, (a) GRAF Wheeled Figure Skate Backpacks (b) GRIT PX4 Pro Hockey Carry Bags (c) Sher-Wood Heritage Senior Hockey Duffle Bags (d) Alkali RPD Max+ Team Duffle Hockey Equipment Bags, and (e) True Pro Senior Hockey Equipment Bags, all of which expose users to DEHP.
- 7. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinment 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 DEHP pursuant to Health and Safety Code § 25249.7(a).
  - 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

### **PARTIES**

- 11. 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).
- 12. Defendant Monkeysports, through its business, effectively 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 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
- 13. Plaintiff alleges that defendant Monkeysports 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**

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

16. This Court has jurisdiction over Defendant because defendant 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.

## STATUTORY BACKGROUND

- 17. The people of the State of California declared in Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65.)
- 18. To effect this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to substances listed by the State of California as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...

- 19. An exposure to a chemical in a consumer product is one "which results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that "a person in the course of doing business ... shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning."
- 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or more of the following methods individually or in combination:<sup>1</sup>
  - a. A warning that appears on a product's label or other labeling.

<sup>&</sup>lt;sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning requirements set out in the amended version of 27 CCR 25601, et.seq. as amended on August 30, 2016, and operative on August 30, 2018.

- b. Identification of the product at the retail outlet in a manner which provides a warning. Identification may be through shelf labeling, signs, menus, or a combination thereof.
- c. The warnings provided pursuant to subparagraphs (a) and (b) shall be prominently placed upon a product's labels or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.
- d. A system of signs, public advertising identifying the system and toll-free information services, or any other system that provides clear and reasonable warnings.
- 21. Proposition 65 provides that any "person who violates or threatens to violate" the statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase "threaten to violate" is defined to mean creating "a condition in which there is a substantial probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

### FACTUAL BACKGROUND

- 22. On January 1, 1988, the State of California listed DEHP 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). On October 24, 2003, the State of California listed DEHP as a chemical known to cause reproductive toxicity.
- 23. The consumer exposures to DEHP from use of the Products that is the subject of this FAC result primarily from dermal absorption and oral ingestion exposure resulting from hand-to-mouth transfer.
- 24. No clear and reasonable exposure warning is provided with the Products regarding the health hazards of exposure to DEHP.

- 25. Defendant has marketed, distributed, offered to sell and/or sold the Products in California since at least February 4, 2021. The Products continue to be distributed and sold in California without the requisite warning information.
- 26. At all times relevant to this action, Defendant has knowingly and intentionally exposed users and/or consumers of the Products to DEHP without first giving a clear and reasonable exposure warning to such individuals.
- 27. As a proximate result of acts by Defendant, as a person in the course of doing business within the meaning of H&S Code § 25249.11, individuals throughout the State of California, including in San Francisco County, have been exposed DEHP without a clear and reasonable warning on the Products. The individuals subject to the violative exposures include normal and foreseeable users and consumers that use the Products, as well as all others exposed to the Products.

## **SATISFACTION OF NOTICE REQUIREMNTS**

- 28. Plaintiff purchased the Products from Monkeysports. At the time of purchase Monkeysports did not provide a Proposition 65 exposure warning for DEHP in a manner consistent with H&S Code § 25603.1 as described *supra*.
- 29. Each Product was sent to a testing laboratory to determine the content, if any, of Proposition 65 listed chemicals.
- 30. The laboratory results of this testing found large quantities of DEHP in the Products (the "Chemical Test Reports").
- 31. Plaintiff provided the Chemical Test Reports for each Product and the Products to an analytical chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable and foreseeable use of the Products, exposure to DEHP will occur at levels that require Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California Code of Regulations.
- 32. Plaintiff received from the analytical chemist exposure assessment reports for each Product which concluded that persons in California who use the Products will be exposed to levels of DEHP that require a Proposition 65 exposure warning.

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- 33. (GRIT PX4 Pro Hockey Carry Bags, Sher-Wood Heritage Senior Hockey Duffle Bags and Alkali RPD Max+ Team Duffle Hockey Equipment Bags), and March 2, 2021 (True Pro Senior Hockey Equipment Bags), Plaintiff gave notice of alleged violations of Health and Safety Code § 25249.6 (the collectively, the "Notices") to Defendant concerning the exposure of California citizens to DEHP from use of the Products without proper warning, subject to a private action to Defendant and to the California Attorney General's office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibits "A - E" true and correct copies of each
- 34. the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding exposure to DEHP, and that counsel believed there was meritorious and reasonable cause for a
- 35. After receiving the Notices, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged violations which are the subject of the Notices.
  - 36. Plaintiff is commencing this action more than sixty (60) days from the date of the Notices to Defendant, as required by law.

## FIRST CAUSE OF ACTION

On February 4, 2021 (GRAF Wheeled Figure Skate Backpacks), February 15, 2021

The Notices complied with all procedural requirements of Proposition 65 including

## (By Plaintiff against Defendant for the Violation of Proposition 65)

- 37. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 38 of this Complaint as though fully set forth herein.
- 38. Defendant has, at all times mentioned herein, acted as a distributer, and/or retailer of the Products.

- 39. Use of the Products will expose consumers to DEHP, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.
  - 40. The Products do not comply with the Proposition 65 warning requirements.
- 41. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since February 4, 2021, continuing until the present, that Defendant has continued to knowingly and intentionally expose California users and consumers of the Products to DEHP without providing required warnings under Proposition 65.
- 42. The exposures that are the subject of the Notices result from the purchase, acquisition, handling and recommended use of the Products. The primary route of exposure to DEHP is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Products with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to DEHP.
- 43. Plaintiff, based on his best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to purchasers and users or until these known toxic chemicals are removed from the Products.
- 44. Defendant has knowledge that the normal and reasonably foreseeable use of the Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur by its deliberate, non-accidental participation in the importation, distribution, sale and offering of the Products to consumers in California
- 45. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this Complaint.
- 46. 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.
- 47. 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.

# **EXHIBIT A**

#### LAW OFFICES

# **BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900 BEVERLY HILLS, CA 90212 877.534.2590 www.brodskysmith.com

NEW JERSEY OFFICE 1310 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08934 856.795,7250 NEW YORK OFFICE 240 MINEOLA BOULEVARD MINEOLA, NY 11501 516.741.4977 PENNSYLVANIA OFFICE TWO BALA PLAZA, STE. 805 BALA CYNWYD, PA 19004 610.667.6200

#### February 4, 2021

President/CEO	President/CEO
U.S.A. Intersport, Inc.	U.S.A. Intersport, Inc.
59 Appleton Street	24 Pevwell Drive
Saugus, MA 01906	Saugus, MA 01906
President/CEO	President/CEO
MonkeySports, Inc.	MonkeySports, Inc. dba HockeyMonkey.com
c/o Dave Reskey	105 West Bethany Drive
1962 Barranca Parkway	Allen, TX 75013
Irvine, CA 92606	
President/CEO	President/CEO
GRAF Skates AG Corporation	Mike Vaughn Custom Sports, Inc.
501B Nightingale Ave.	c/o Mike Vaughn
London, ON N5W 4C4	550 S Glaspie St.
	Oxford, MI 48371

## 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act1

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

<sup>&</sup>lt;sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

### I. DESCRIPTION OF THE VIOLATION

- Enforcer: Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
- 2. Alleged Violator(s): U.S.A. Intersport, Inc.; MonkeySports, Inc.; MonkeySports, Inc. dba HockeyMonkey.com, GRAF Skates AG Corporation, Mike Vaughn Custom Sports, Inc.
- 3. Time Period of Exposure: Violations have been occurring since at least November 17, 2020 and are continuing to this day.
- **4. Listed Chemical**: Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.

#### 5. Product:

Product <sup>2</sup>	Non- Exclusive Examples of the Product
GRAF backpack	GRAF backpack
<u>-</u>	UPC # 8 85920 25019 9

6. Description of Exposure: The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to DEHP is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

#### II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

#### III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

<sup>&</sup>lt;sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely

Evan J. Smill

## Attachments

Certificate of Merit Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# **EXHIBIT B**

LAW OFFICES

# **BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900 BEVERLY HILLS, CA 90212 877.534.2590 www.brodskysmith.com

NEW JERSEY OFFICE 1310 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08934 856.795.7250 NEW YORK OFFICE 240 MINEOLA BOULEVARD MINEOLA, NY 11501 516.741.4977 PENNSYLVANIA OFFICE TWO BALA PLAZA, STE. 805 BALA CYNWYD, PA 19004 610.667.6200

#### February 15, 2021

President/CEO
MonkeySports, Inc.
c/o Dave Reskey
1962 Barranca Parkway
Irvine, CA 92606

#### 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act1

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

## I. DESCRIPTION OF THE VIOLATION

Enforcer: Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.

<sup>&</sup>lt;sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

- **2. Alleged Violator(s):** Grit Inc.; MonkeySports, Inc.; MonkeySports, Inc. dba HockeyMonkey.com
- 3. Time Period of Exposure: Violations have been occurring since at least November 17, 2020 and are continuing to this day.
- **4. Listed Chemical**: Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.

#### 5. Product:

Product <sup>2</sup>	Non- Exclusive Examples of the Product
GRIT bag	GRIT bag
_	UPC# 670477004025

6. Description of Exposure: The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

#### II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

### III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

<sup>&</sup>lt;sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Sincerely,

Attachments

Certificate of Merit

Certificate of Service
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# **EXHIBIT C**

#### LAW OFFICES

# **BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900 BEVERLY HILLS, CA 90212 877.534,2590 www.brodskysmith.com

NEW JERSEY OFFICE 1310 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08934 856,795,7250 NEW YORK OFFICE 240 MINEOLA BOULEVARD MINEOLA, NY 11501 516,741.4977

PENNSYLVANIA OFFICE TWO BALA PLAZA, STE. 805 BALA CYNWYD, PA 19004 610.667.6200

### February 15, 2021

President/CEO	President/CEO
INA International Ltd.	Sherwood-Drolet Corporation Ltd.
824 41st Avenue NE Calgary	2745 Sherwood Blvd. Sherbrooke
Alberta, CANADA T2E 3R3	Province of Quebec, CANADA J1K 1E1
President/CEO	President/CEO
Sher-wood Hockey Inc.	Canadian Tire Corporation, Limited
1 Hereford Street,	2180 Yonge Street
Brampton, Ontario, Canada,	Toronto, ON M4P 2V8
L6Y 0J7	
President/CEO	President/CEO
MonkeySports, Inc.	MonkeySports, Inc. dba HockeyMonkey.com
c/o Dave Reskey	105 West Bethany Drive
1962 Barranca Parkway	Allen, TX 75013
Irvine, CA 92606	

### 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act1

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

<sup>&</sup>lt;sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

#### I. DESCRIPTION OF THE VIOLATION

- Enforcer: Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
- 2. Alleged Violator(s): INA International Ltd.; Sherwood-Drolet Corporation Ltd.; Sher-wood Hockey Inc.; Canadian Tire Corporation, Limited; MonkeySports, Inc.; MonkeySports, Inc. dba HockeyMonkey.com
- 3. Time Period of Exposure: Violations have been occurring since at least November 17, 2020 and are continuing to this day.
- **4. Listed Chemical**: Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.

#### 5. Product:

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Sher-wood bag	Sher-wood bag
	UPC# 771249280989

6. Description of Exposure: The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

### II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

#### III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

<sup>&</sup>lt;sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely

Evan J. Smith

Attachments

Certificate of Merit Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# **EXHIBIT D**

LAW OFFICES

# **BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE, 900 BEVERLY HILLS, CA 90212 877.534.2590 www.brodskysmith.com

NEW JERSEY OFFICE 1310 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08934 856.795.7250 NEW YORK OFFICE 240 MINEOLA BOULEVARD MINEOLA, NY 11501 516.741.4977 PENNSYLVANIA OFFICE TWO BALA PLAZA, STE. 805 BALA CYNWYD, PA 19004 610.667.6200

## February 15, 2021

President/CEO	President/CEO
Wholesale Sports, Inc.	MonkeySports, Inc.
c/o Chris Malki	c/o Dave Reskey
2755 Dos Aarons Way, Suite A	1962 Barranca Parkway
Vista, CA 92081	Irvine, CA 92606
President/CEO	President/CEO
Alkali Hockey, LLC	MonkeySports, Inc. dba HockeyMonkey.com
2755 Dos Aarons Way, Suite A	105 West Bethany Drive
Vista, California 92081	Allen, TX 75013

#### 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act1

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

## I. DESCRIPTION OF THE VIOLATION

1. Enforcer: Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.

<sup>&</sup>lt;sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

- 2. Alleged Violator(s): Wholesale Sports, Inc.; Alkali Hockey, LLC; MonkeySports, Inc.; MonkeySports, Inc. dba HockeyMonkey.com
- 3. Time Period of Exposure: Violations have been occurring since at least November 17, 2020 and are continuing to this day.
- **4. Listed Chemical**: Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.

## 5. Product:

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Alkali bag	Alkali bag
	UPC# 848167007674

6. Description of Exposure: The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

### II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

#### III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

<sup>&</sup>lt;sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Sincerely,

Evan J. Smith

Attachments

Certificate of Merit Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# **EXHIBIT E**

#### LAW OFFICES

## **BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900 BEVERLY HILLS, CA 90212 877.534.2590 www.brodskysmith.com

#### NEW JERSEY OFFICE 1310 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08934 856.795.7250

#### NEW YORK OFFICE 240 MINEOLA BOULEVARD MINEOLA, NY 11501 516.741.4977

#### PENNSYLVANIA OFFICE TWO BALA PLAZA, STE. 805 BALA CYNWYD, PA 19004 610.667.6200

### March 2, 2021

President/CEO	Member/Manager
True Temper Sports, Inc.	True Temper Sports, LLC
c/o The Corporation Trust Company	c/o Corporation Service Company
Corporation Trust Center	251 Little Falls Drive
1209 Orange Street	Wilmington, DE 19808
Wilmington, DE 19801	
Owner	President/CEO
True Hockey	MonkeySports, Inc.
40 S. Main Street, 20 <sup>th</sup> Floor	c/o Dave Reskey
Memphis, TN 38103	1962 Barranca Parkway
	Irvine, CA 92606
President/CEO	President/CEO
MonkeySports CA, Inc.	MonkeySports, Inc. dba HockeyMonkey.com
c/o Tom Arnold	105 West Bethany Drive
1550 Magnolia Ave., Suite 101	Allen, TX 75013
Corona, CA 92879-2095	

#### 60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act1

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on

<sup>&</sup>lt;sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

#### I. <u>DESCRIPTION OF THE VIOLATION</u>

- Enforcer: Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 424-285-4896.
- 2. Alleged Violator(s): True Temper Sports, Inc.; True Temper Sports, LLC; True Hockey; MonkeySports, Inc.; MonkeySports CA, Inc.; MonkeySports, Inc. dba HockeyMonkey.com
- 3. Time Period of Exposure: Violations have been occurring since at least November 17, 2020 and are continuing to this day.
- **4. Listed Chemical**: Diisononyl phthalate (DINP). DINP is listed under Proposition 65 as a chemical known to the State to cause cancer.

#### 5. Product:

Product <sup>2</sup>	Non- Exclusive Examples of the Product
True bag	True bag

6. Description of Exposure: The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

#### II. PROPOSITION 65 INFORMATION

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### III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have

<sup>&</sup>lt;sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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Sincerely

Evan J. Smit

Attachments

Certificate of Merit Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary