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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/28/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 UNIFIRST-FIRST AID CORPORATION
15 dba GREEN GUARD, UNIFIRST
16 CORPORATION, HDS IP HOLDING,
17 LLC, HD SUPPLY, INC., HD SUPPLY
18 HOLDINGS, INC.,

19 Defendants.

Case No.:

CGC-22-598906

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

22 **BACKGROUND OF THE CASE**

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

2. This complaint 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 to be informed of the health
hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found in Medi-First

1 first aid kits sold and/or distributed by defendant Unifirst-First Aid Corporation dba Green Guard,
2 and/or defendant Unifirst Corporation (collectively, “Unifirst”) and/or defendant HDS IP Holding,
3 LLC, and/or defendant HD Supply, Inc., and/or defendant HD Supply Holdings, Inc., (collectively,
4 “HD Supply”) (collectively, Unifirst and HD Supply are referred to as the “Defendants”) in
5 California.

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

10 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
11 within California or sell products therein to comply with Proposition 65 regulations. Included in
12 such regulations is the requirement that businesses must label any product containing a Proposition
13 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
14 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
15 chemical.

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
17 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
18 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
19 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
20 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
21 25249.7.

22 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
23 without a requisite exposure warning, Medi-First first aid kits (the “Products”) that expose persons
24 to DINP when used for their intended purpose.

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

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

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants 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).

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 Unifirst, 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. Plaintiff alleges that Defendant Unifirst is a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

13. Defendant HD Supply, 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. Plaintiff alleges that Defendant HD Supply 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 Defendants conducted, and continue to conduct, business in the County of San Francisco with respect to the Products.

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

6 16. This Court has jurisdiction over Defendants because each defendant is either a
7 citizen of the State of California, has sufficient minimum contacts with the State of California, is
8 registered with the California Secretary of State as foreign corporations authorized to do business
9 in the State of California, and/or has otherwise purposefully availed itself of the California market.
10 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
11 and permissible with traditional notions of fair play and substantial justice.

12 **STATUTORY BACKGROUND**

13 17. The people of the State of California declared in Proposition 65 their right “[t]o be
14 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
15 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

16 18. To effect this goal, Proposition 65 requires that individuals be provided with a
17 “clear and reasonable warning” before being exposed to substances listed by the State of California
18 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

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

22 19. An exposure to a chemical in a consumer product is one “which results from a
23 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
24 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
25 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
26 shall provide a warning to any person to whom the product is sold or transferred unless the product
27 is packaged or labeled with a clear and reasonable warning.”
28

1 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
2 more of the following methods individually or in combination:¹

3 a. A warning that appears on a product’s label or other labeling.

4 b. Identification of the product at the retail outlet in a manner which provides
5 a warning. Identification may be through shelf labeling, signs, menus, or a combination
6 thereof.

7 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
8 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet
9 with such conspicuousness, as compared with other words, statements, designs, or devices
10 in the label, labeling or display as to render it likely to be read and understood by an
11 ordinary individual under customary conditions of purchase or use.

12 d. A system of signs, public advertising identifying the system and toll-free
13 information services, or any other system that provides clear and reasonable warnings.

14 21. Proposition 65 provides that any “person who violates or threatens to violate” the
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
16 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
17 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
19 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

20 **FACTUAL BACKGROUND**

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

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26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 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.

1 23. The exposures that are the subject of the Notice result from the purchase,
2 acquisition, handling, and recommended use of the Products. Consequently, the primary route of
3 exposure to these chemicals is through dermal absorption. Dermal absorption of DINP can occur
4 through direct skin contact when the Products are contacted with bare hands or other exposed skin.
5 Additionally, some amount of exposure through ingestion will occur by touching the Products with
6 subsequent touching of the user’s hand to mouth.

7 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
8 and/or sold the Products in California since at least April 28, 2021. The Products continue to be
9 distributed and sold in California without the requisite warning information.

10 25. At all times relevant to this action, Defendants have knowingly and intentionally
11 exposed users of the Products to DINP without first giving a clear and reasonable exposure
12 warning to such individuals.

13 26. As a proximate result of acts by each defendant, as a person in the course of doing
14 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
15 California, including in San Francisco County, have been exposed to DINP without a clear and
16 reasonable warning on the Products. The individuals subject to the violative exposures include
17 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
18 the Products.

19 **SATISFACTION OF NOTICE REQUIREMENTS**

20 27. On February 21, 2021, Plaintiff purchased the Product from HD Supply. At the
21 time of purchase, HD Supply and Unifirst did not provide a Proposition 65 exposure warning for
22 DINP or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1
23 as described *supra*.

24 28. On or about March 30, 2021, the Product was sent to a testing laboratory for
25 phthalate testing to determine the phthalate content of the Product.

26 29. April 1, 2021, the laboratory provided the results of its analysis. Results of this test
27 determined the Product exposes users to DINP (the “Chemical Test Report”).
28

1 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
2 to determine if, based on the findings of the Chemical Test Report and the reasonable and
3 foreseeable use of the Product, exposure to DINP will occur at levels that require Proposition 65
4 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
5 Code of Regulations.

6 31. On April 10, 2021, Plaintiff received from the analytical chemist an exposure
7 assessment report which concluded that persons in California who use the Products will be exposed
8 to levels of DINP that require a Proposition 65 exposure warning.

9 32. On April 28, 2021, Plaintiff gave notice of alleged violation of Health and Safety
10 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
11 DINP from use of the Products without proper warning, subject to a private action to Defendants
12 and to the California Attorney General's office and the offices of the County District attorneys and
13 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
14 violations allegedly occurred.

15 33. The Notice complied with all procedural requirements of Proposition 65 including
16 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
17 least one person with relevant and appropriate expertise who reviewed relevant data regarding
18 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private
19 action.

20 34. After receiving the Notice, and to Plaintiff's best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
22 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
23 are the subject of the Notice.

24 35. Plaintiff is commencing this action more than sixty (60) days from the date of the
25 Notice to Defendants, as required by law.
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1 **FIRST CAUSE OF ACTION**

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

3 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
4 this Complaint as though fully set forth herein.

5 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
6 of the Products.

7 38. Use of the Products will expose users and consumers thereof to DINP, a hazardous
8 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

9 39. The Products do not comply with the Proposition 65 warning requirements.

10 40. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least April 28, 2021, continuing until the present, that Defendants have continued to
12 knowingly and intentionally expose California users and consumers of the Products to DINP
13 without providing required warnings under Proposition 65.

14 41. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the Products. Consequently, the primary route of
16 exposure to these chemicals is through dermal absorption. Dermal absorption of DINP can occur
17 through direct skin contact when the Products are contacted with bare hands or other exposed skin.
18 Additionally, some amount of exposure through ingestion will occur by touching the Products with
19 subsequent touching of the user's hand to mouth.

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

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

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

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
7 relief:

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


11 B. That the court preliminarily and permanently enjoin Defendants, mandating
12 Proposition 65 compliant warnings on the Products;

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

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

16 Dated: March 28, 2022

BRODSKY & SMITH

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