1 2 3	Laralei Paras, State Bar No. 203319 SEVEN HILLS LLP 4 Embarcadero Center, Suite 1400 San Francisco, CA 94111 Telephone: (415) 926-7247 laralei@sevenhillsllp.com		ELECTRONICALLY FILED Superior Court of California, County of San Francisco
4 5	Attorneys for Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL		05/25/2023 Clerk of the Court BY: JEFFREY FLORES Deputy Clerk
6 7	SUPERIOR COURT OF TH		
8	CITY AND COUNTY OF SAN FRANCISCO		
9 10	UNLIMITED CIV	IL JURISDICTION	CGC-23-606733
11	KEEP AMERICA SAFE AND BEAUTIFUL,	Case No.	
12	Plaintiff,	COMPLAINT FOR AND INJUNCTIVE	
13 14 15	v. ROUND TWO DESIGNS LLC; ROUND TWO LLC; and DOES 1-30, inclusive, Defendants.	Violation of Proposition The Safe Drinking War Enforcement Act of 19 (Health & Safety Code	nter and Toxic 986
16		Action is an Unlimited	l Civil Case
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	COMPLAINT FOR CIVIL PENA	LTIES AND INJUNCTIVE	RELIEF

Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a cause of action against DEFENDANTS ROUND TWO DESIGNS LLC, ROUND TWO LLC, and DOES 1-30.

INTRODUCTION AND NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff KEEP AMERICA SAFE AND BEAUTIFUL in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazard caused by exposures to diisononyl phthalate ("**DINP**"), a toxic chemical in and on defendants' vinyl/PVC bags sold in the state of California.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq*.
they are being exposed to substances known to the State of California to cause cancer through exposures to DINP, present in and on vinyl/PVC bags manufactured, branded, distributed, imported, sold and otherwise offered for sale or use throughout the state of California by defendants.

3. Detectable levels of DINP are found in and on the vinyl/PVC bags defendants
manufacture, brand, import, distribute, sell or offer for sale to individuals throughout the state of
California.

4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
Health and Safety Code § 25249.6 *et seq.* ("**Proposition 65**"), it is unlawful for a person in the
course of doing business to knowingly and intentionally expose consumers in California to
chemicals known to the State of California to cause cancer without first providing a "clear and
reasonable" health hazard warning to such individuals prior to purchase or use.

5. KEEP AMERICA SAFE AND BEAUTIFUL contends and alleges defendants
manufacture, distribute, import, sell, and offer for sale, in or into California, distribute vinyl/PVC
bags containing DINP without Proposition 65's requisite health hazard warning about the presence
of, and the harm associated with exposures to, the chemical, including, but not limited to, *R2 Bag Within a Bag PVC Tote, 30-H20007, PO: 10455* (collectively referred to hereinafter, the
"PRODUCTS"). Defendants' conduct subjects them to civil penalties for each violation, as well as
enjoinment and preliminary and permanent injunctive relief. Health & Saf. Code § 25249.7(a)-(b).

1	PARTIES		
2	6. Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL is a citizen of the state of		
3	California seeking to eliminate toxic chemicals in consumer products, to increase public awareness		
4	of those chemicals and to promote corporate responsibility. KEEP AMERICA SAFE AND		
5	BEAUTIFUL is a person within the meaning of Health & Safety Code § 25249.11(a) and brings this		
6	action in the public interest pursuant to Health and Safety Code § 25249.7(d).		
7	7. Plaintiff is informed, believes and thereon alleges that, at all relevant times,		
8	Defendant ROUND TWO DESIGNS LLC was and is a person in the course of doing business, with		
9	ten (10) or more employees, within the meaning of Health and Safety Code §§ 25249.6 and		
10	25249.11.		
11	8. ROUND TWO DESIGNS LLC manufactures, brands, imports, distributes, sells,		
12	and/or offers the PRODUCTS for sale or use in the state of California, or implies by its conduct that		
13	it manufactures, brands, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in		
14	the state of California.		
15	9. Plaintiff is informed, believes and thereon alleges that, at all relevant times,		
16	Defendant ROUND TWO LLC was and is a person in the course of doing business, with ten (10) or		
17	more employees, within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.		
18	10. ROUND TWO LLC manufactures, brands, imports, distributes, sells, and/or offers		
19	the PRODUCTS for sale or use in the state of California, or implies by its conduct that it		
20	manufactures, brands, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the		
21	state of California.		
22	11. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person		
23	in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and		
24	25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and		
25	manufacture, or each impliedly does so by its conduct, one or more of the PRODUCTS offered for		
26	sale or use in California.		
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28	111		

12. Defendants DOES 11-20 ("**DISTRIBUTOR DEFENDANTS**") are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California

13. Defendants DOES 21-30 ("RETAILER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the State of California.

14. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
unknown to plaintiff, who, therefore, sues said DEFENDANTS by their fictitious names, pursuant to
Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each
of the fictitiously named Defendants is responsible in some manner for the acts and occurrences
alleged herein and the damages caused thereby. When ascertained, their true names and capacities
shall be reflected in an amended complaint.

16 15. At all times mentioned herein, ROUND TWO DESIGNS LLC, ROUND TWO LLC,
17 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER
18 DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the
19 "DEFENDANTS."

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to Health & Safety Code
§ 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10,
which grants the Superior Court "original jurisdiction in all causes except those given by statute to
other trial courts." The statute under which this action is brought does not specify any other basis of
subject matter jurisdiction.

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17. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that DEFENDANTS are each a person, firm, corporation or association that is a citizen of the State of California, does sufficient business in California, have sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail themselves of the California market through their manufacture, importation, distribution, promotion, marketing or sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

9 18. Venue is proper in the Superior Court for the City and County of San Francisco
10 pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of
11 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one
12 or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or
13 because DEFENDANTS conducted, and continue to conduct, business in the city and county of San
14 Francisco with respect to the PRODUCTS that are the subject of this action.

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REGULATORY BACKGROUND AND LAW

16 19. In 1986, the people of the State of California approved an initiative addressing
17 concerns regarding the harms caused by hazardous chemicals and declaring their right "[t]o be
18 informed about exposures the chemicals that cause cancer, birth defects, or other reproductive
19 harm." Ballot Pamp., Proposed General Law, Gen, Elec. (Nov. 4, 1986) at p.3.

20 20. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and 21 codified at Health & Safety Code §§ 25249.6 *et seq.*, Proposition 65 states in relevant part that "[n]o 22 person in the course of doing business shall knowingly and intentionally expose any individual to a 23 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable 24 warning to such individual..."

25 21. Under the Act, a "person the course of doing business" is defined as a business with
26 ten (10) or more employees. Health & Saf. Code § 25249.11(b). Businesses are prohibited from
27 exposing individuals to hazardous chemicals without first giving a "clear and reasonable" health
28 hazard warning. Health & Saf. Code § 25249.6.

22. An exposure to a hazardous chemical is defined as one that "results from a person's
 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...."
 Cal. Code Regs. ("CCR"), tit. 27, section 25600(h).
 Proposition 65 provides that persons violating the statute may be enjoined in any

court of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per
violation. Health & Saf. Code § 25249.7.

24. On December 20, 2013, pursuant to Proposition 65, California identified and listed DINP as a chemical known to cause cancer. DINP became subject to the "clear and reasonable warning" requirements one year later, on December 20, 2014. 27 CCR § 27001(c); Health & Saf. Code §§ 25249.8, 25249.10(b).

STATEMENT OF FACTS

12 25. Plaintiff purchased, investigated and tested DEFENDANTS' PRODUCTS at an
13 accredited lab, and, after consultation with a person with relevant and appropriate expertise who
14 reviewed the collected data and analyzed the risk of exposures to DINP, determined the
15 PRODUCTS exposure consumers in California to the listed chemical at levels that require a warning
16 under the statute, based on consumers touching, handling or otherwise utilizing the PRODUCTS in
17 accordance with their reasonably foreseeable usage.

18 26. Plaintiff purchased, or caused to be purchased, the PRODUCT without a warning in
19 the state of California.

20 27. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting
21 there was a reasonable and meritorious case for this private action, and included the factual
22 information supporting the certificate served on the California Attorney General's Office, as
23 required. Health & Saf. Code § 25249.7(d); 11 CCR § 3102.

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1	28. Thereafter, on October 6, 2022, plaintiff served a 60-Day Notice of Violation		
2	("Notice"), together with the requisite certificate of merit, on Round Two Designs LLC, Round Two		
3	Hollywood, LLC, Round Two LLC, the California Attorney General's Office, and the requisite		
4	public enforcement agencies, alleging that, as a result of DEFENDANTS' sales of the PRODUCTS,		
5	consumers in the state of California were and are being exposed to DINP resulting from their		
6	reasonably foreseeable use of the PRODUCTS without first receiving a "clear and reasonable		
7	warning," as required by Proposition 65.		
8	29. After receiving plaintiff's Notice, no public enforcement agency has commenced and		
9	is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce		
10	the alleged violations that are the subject of the Notice.		
11	FIRST CAUSE OF ACTION		
12	(Violation of Proposition 65 - Against All DEFENDANTS)		
13	30. KEEP AMERICA SAFE AND BEAUTIFUL realleges and incorporates by reference,		
14	as if fully stated herein, the allegations set forth in Paragraphs 1 through 29, inclusive.		
15	31. DEFENDANTS' PRODUCTS contain DINP in levels that require a clear and		
16	reasonable warning under Proposition 65.		
17	32. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,		
18	brand, import, distribute, sell, and offer for sale in California contain DINP. Plaintiff's Notice also		
19	informed DEFENDANTS of the presence of DINP in the PRODUCTS.		
20	33. The PRODUCTS that DEFENDANTS manufacture, brand, import, distribute, sell,		
21	and offer for sale or use in the state of California cause exposures to DINP, as a result of the		
22	reasonably foreseeable use of the PRODUCTS, through dermal contact and/or ingestion.		
23	34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and		
24	continues to cause, exposures to DINP.		
25	35. DEFENDANTS know that the normal and reasonably foreseeable use of the		
26	PRODUCTS exposes individuals to DINP through dermal contact and/or ingestion.		
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36. DEFENDANTS intend that exposures to DINP from the reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the California marketplace.

37. The exposures to DINP, caused by DEFENDANTS and endured by consumers and other individuals in the state of California, are not exempt from the "clear and reasonable" warning 5 requirements of Proposition 65.

38. DEFENDANTS failed to provide a "clear and reasonable warning" to those 8 consumers and other individuals in the state of California who have been, or who will be, exposed to 9 DINP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

10 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, consumers and other individuals exposed to DINP through dermal 11 12 contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without 13 a "clear and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable 14 harm for which they have no plain, speedy, or adequate remedy at law.

15 40. DEFENDANTS manufacture, brand, import, distribute, sell, and offer the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' 16 17 violations have continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' 18 violations are ongoing and continuous in nature and, unless enjoined, will continue in the future.

19 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-20 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 21 per day for each violation.

22 42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) 23 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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1	PRAYER FOR RELIEF		
2	Wherefore, KEEP AMERICA SAFE AND BEAUTIFUL prays for relief and judgment		
3	against DEFENDANTS, and each of them, as follows:		
4	1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and		
5	permanently enjoin DEFENDANTS, and each of them, from manufacturing, branding, distributing,		
6	importing, selling or otherwise offering the PRODUCTS for sale or use in California without first		
7	providing a "clear and reasonable warning" regarding the harms associated with exposures to DINP;		
8	2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary		
9	and permanent injunctions mandating that DEFENDANTS, and each of them, recall all PRODUCTS		
10	currently in the chain of commerce in California without a "clear and reasonable warning";		
11	3. That the Court, assess civil penalties against DEFENDANTS, and each of them, in		
12	the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at		
13	trial;		
14	4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred		
15	herein; and		
16	5. That the Court grant any further relief as the Court may deem just and equitable.		
17	Dated: May 25, 2023 Respectfully submitted,		
18	SEVEN HILLS LLP		
19 20	B.v.		
20	By: Laratei S. Paras		
21 22	Attorneys for Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL		
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF		