1 2 3 4 5 6 7 8	David R. Bush, State Bar No. 154511 LAW OFFICE OF DAVID R. BUSH 321 South Main Street #502 Sebastopol CA 95472 Telephone: (707) 321-5028 Jeremy Fietz, State Bar No. 200396 LAW OFFICES OF JEREMY FIETZ 4241 Montgomery Drive #123 Santa Rosa, CA 95404 Telephone: (707) 236-0888 Attorneys for Plaintiff MICHAEL DIPIRRO	ELECTRONICALLY FILED Superior Court of California, County of Alameda 04/14/2023 at 10:02:21 AM By: Baine Jefferson, Deputy Clerk
9	SUPERIOR COURT OF	THE STATE OF CALIFORNIA
10	COUNTY OF ALAMEDA UNLIMITED CIVIL JURISDICTION	
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14	MICHAEL DIPIRRO,	Case No. 230V031239
15	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES
16	v.	AND INJUNCTIVE RELIEF
17	SPYDER MANUFACTURING, INC.; and DOES 1-150,	(Health & Safety Code. § 25249.6 et seq.)
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19	Defendants.	
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff MICHAEL DIPIRRO in the public interest of the citizens of the State of California to enforce the People's right to be informed of the presence of Diethylhexyl phthalate ("DEHP"), a toxic chemical, for exposures created by the use of rope bags sold in California, including but not limited to the *Climb Right 30 L Rope Bag Deluxe, Model #36144*.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn California citizens about the risk of exposure to DEHP from the use of the rope bags that are manufactured, distributed, and/or offered for sale or use to consumers throughout the State of California without the requisite health hazard warnings.

3. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn California citizens about the risk of exposure to DEHP in rope bags that are manufactured, distributed, and/or offered for sale or use to consumers throughout the State of California.

4. Exposure to high levels of DEHP are commonly produced through the normal and
foreseeable use of rope bags that defendants manufacture, distribute, and/or offer for sale to
consumers throughout the State of California without requisite health hazard warnings.

Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[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 giving clear and reasonable
warning to such individual" Health & Safety Code § 25249.6.

Pursuant to Proposition 65, on January 1, 1988, California identified and listed
 DEHP as a chemical known to cause cancer. DEHP became subject to the "clear and
 reasonable warning" requirements of the act one year later on January 1, 1988, for cancer. On
 October 24, 2003, California identified and listed DEHP as a chemical known to cause
 developmental toxicity (male). DEHP became subject to the "clear and reasonable warning"
 requirements of the act one year later on October 24, 2004, for developmental toxicity (male).

Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP is referred to hereinafter as the "LISTED CHEMICAL."

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7. Defendants manufacture or otherwise process for sale, distribute, and sell rope bags including, but not limited to the Climb Right 30 L Rope Bag Deluxe, Model #36144, the normal and foreseeable use of which results in exposure to DEHP at levels that require health hazard warnings under Proposition 65. All such rope bags are referred to collectively hereinafter as the "PRODUCTS."

8. Defendants' failure to warn consumers and other individuals in the State of California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinment of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

13 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and 14 permanent injunctive relief to compel defendants to provide purchasers or users of the 15 PRODUCTS with the required warning regarding the health hazards of the LISTED 16 CHEMICAL. Health & Safety Code § 25249.7(a).

10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil 18 penalties against defendants for their violations of Proposition 65.

PARTIES

11. Plaintiff MICHAEL DIPIRRO is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products; and he brings this action in the public interest pursuant to Health and Safety Code section 25249.7(d).

12. Defendant SPYDER MANUFACTURING, INC. ("SPYDER") is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11.

13. Spyder manufactures (or otherwise processes for sale), distributes, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code section 25249.11.

15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, cultivate, harvest and/or manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, cultivate, harvest and/or manufacture one or more of the PRODUCTS offered for sale or use in the State of California.

11 Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person 16. 12 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

13 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or 14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use 15 in the State of California.

Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in 16 18. 17 the course of doing business within the meaning of Health and Safety Code section 25249.11.

18 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the 19 State of California.

20 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to 22 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis 23 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences 24 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

VENUE AND JURISDICTION

21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,

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because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda County, and/or because DEFENDANTS conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

22. 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.

23. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

Plaintiff realleges and incorporates by reference, as if fully set forth herein, 24. Paragraphs 1 through 48, inclusive.

25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declare their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

26. Proposition 65 states, "[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 giving clear and reasonable warning to such individual" Health & Safety Code § 25249.6.

On December 13, 2022, plaintiff's 60-Day Notice of Violation, together with the 27. requisite certificate of merit, was provided to Spyder and certain public enforcement agencies

stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notices of Violation. As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to occur in the future.

29. After receiving the claims asserted in the 60-day Notices of Violation, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

30. The PRODUCTS manufactured, distributed, and offered for sale or use in California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the allowable state limits, such that they require a "clear and reasonable" warning under Proposition 65.

31. DEFENDANTS knew or should have known that the PRODUCTS they manufacture, distribute, and offer for sale or use in California contain the LISTED CHEMICAL.

32. The exposures to the LISTED CHEMICAL result from the normal use of the
PRODUCTS in such a way as to expose individuals through dermal contact during reasonably
foreseeable use.

33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
defined by California Code of Regulations title 27, section 25602(b).

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34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact.

35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, nonaccidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to individuals in the State of California.

36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and other individuals in the State of California who were or who would become exposed to the LISTED CHEMICAL through dermal contact during the reasonably foreseeable uses of the PRODUCTS.

37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted 12 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal 13 contact resulting from the reasonably foreseeable use of the PRODUCTS sold by 14 DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to 15 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

38. 16 Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the 17 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day 18 for each violation.

19 39. As a consequence of the above-described acts, Health and Safety Code 20 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against 21 DEFENDANTS.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. 24 That the Court, pursuant to Health and Safety Code section 25249.7(b), assess 25 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or

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1	offering the PRODUCTS for sale or use in California without first providing a "clear and	
2	reasonable warning" as defined by California Code of Regulations title 27, section 25601 et	
3	seq., as to the harms associated with exposures to the LISTED CHEMICAL;	
4	3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and	
5	4. That the Court grant such other and further relief as may be just and proper.	
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7	Dated: 04/05/2023Respectfully Submitted, LAW OFFICE OF DAVID R. BUSH	
8	(A)	
9	By:	
10	David Bush Attorneys for Plaintiff	
11	MICHAEL DIPIRRO	
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