

Laralei S. Paras, State Bar No. 203319
Rebecca M. Jackson, State Bar No. 221583
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillsllp.com
rebecca@sevenhillsllp.com

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County of San Francisco
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Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,
Plaintiff,
v.
DEALMED MEDICAL SUPPLIES, LLC; and
DOES 1-30, inclusive,
Defendants.

Case No.

CGC-25-621644
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health & Safety Code § 25249.5 *et*
seq.)

UNLIMITED CIVIL

Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
cause of action against Defendants DEALMED MEDICAL SUPPLIES, 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 (“**KASB**”) 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 exposures to diisononyl phthalate
 (“**DINP**”), a toxic chemical found in and on the sphygmomanometers manufactured, imported,
distributed, sold or offered for sale by Defendants 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.*

1 (“**consumers**”) they are being exposed to substances known to the State of California to cause cancer
2 through exposures to DINP, when they purchase, use or handle Defendants’ sphygmomanometers.

3 3. Detectable levels of DINP are found in and on the sphygmomanometers that
4 Defendants manufacture, import, sell or distribute for sale to individuals throughout California.

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

10 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and offer
11 for sale, in and into California sphygmomanometers (“**PRODUCTS**”) containing DINP, without
12 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to the
13 chemical, including, but not limited to, *Sphygmomanometer with Zipper Case, Medium (Arm), Item#*
14 *786422, UPC: 8 59140 00320 0, ASIN: B00A7X4DZ8*. Defendants’ conduct subjects them to civil
15 penalties for each violation, enjoinder as well as preliminary and permanent injunctive relief.
16 Health & Safety Code § 25249.7(a) and (b).

17 **PARTIES**

18 6. Plaintiff KASB is a non-profit corporation organized under the laws of California and
19 proceeding in the interest of the general public, dedicated to protecting the health of California
20 citizens and the environment through the elimination or reduction of toxic chemicals utilized in
21 manufacturing consumer products and to increasing public awareness of those chemicals through the
22 promotion of sound environmental practices and corporate responsibility. KASB is a person within
23 the meaning of Health & Safety Code § 25249.11(a), and it brings this action in the public interest,
24 pursuant to Health and Safety Code § 25249.7(d).

25 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
26 DEALMED MEDICAL SUPPLIES, LLC (“**DEALMED**”) was and is a “person” “in the course of
27
28

1 doing business” with ten (10) or more employees, within the meanings of Health and Safety Code
2 §§ 25249.6 and 25249.11.

3 8. DEALMED manufactures, imports, distributes, sells, and/or offers the PRODUCTS
4 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6 9. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
7 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
8 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
9 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
10 offered for sale or use in California.

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

16 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
17 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
18 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
19 for sale to individuals in the State of California.

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

13. At all times mentioned herein, DEALMED, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action, pursuant to Cal. 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.

15. The California Superior Court has jurisdiction over DEFENDANTS, based on plaintiff's information and good faith belief DEFENDANTS are each a person, firm, corporation or association that is a citizen of the State of California, does sufficient business in California, has 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.

16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more 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 that are the subject of this action.

REGULATORY BACKGROUND AND LAW

17. In 1986, the people of the State of California approved an initiative addressing the harms caused by hazardous chemicals and declared their right “[t]o be informed about exposures to

1 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed
2 General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

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

8 19. Under the Act, a “person in the course of doing business” is defined as a business with
9 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
10 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.
11 Health & Safety Code § 25249.6.

12 20. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
13 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
14 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s
15 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
16 27 C.C.R. § 25600(h).

17 21. Under Proposition 65, persons violating the statute may be enjoined in any court of
18 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
19 Health & Safety Code § 25249.7.

20 22. On December 20, 2013, pursuant to Proposition 65’s implementing regulations,
21 California identified and listed DINP as a chemical known to the State cause cancer. DINP became
22 subject to the “clear and reasonable warning” requirements one year later, on December 20, 2014.
23 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

24 **STATEMENT OF FACTS**

25 23. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

26 24. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,
27 and consulted with a person with relevant and appropriate knowledge and expertise, who, after
28

1 reviewing the collected data and analyzing the risk of exposure to DINP, determined the PRODUCTS
2 subject consumers in California to exposure to the listed chemical at levels requiring a warning under
3 the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their
4 reasonably foreseeable and intended usages.

5 25. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting
6 there was a reasonable and meritorious case for this private action and included the factual
7 information supporting the certificate when it served the notice on the California Attorney General's
8 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

9 26. Thereafter, on September 6, 2024, plaintiff served a 60-Day Notice of Violation
10 ("Notice"), together with the certificate of merit, on DEALMED, the California Attorney General's
11 Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales
12 of the PRODUCTS, consumers in the State of California were, and are, being exposed to DINP
13 through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a
14 "clear and reasonable warning," as required by Proposition 65.

15 27. After receiving plaintiff's Notice, no public enforcement agency has commenced and
16 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
17 the alleged violations that are the subject of the Notice.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65 - Against All DEFENDANTS)**

20 28. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
21 set forth in Paragraphs 1 through 27, inclusive.

22 29. DEFENDANTS' PRODUCTS contain DINP in levels requiring a clear and reasonable
23 warning under Proposition 65.

24 30. DEFENDANTS know or should have known the PRODUCTS they manufacture,
25 import, distribute, sell, and offer for sale in California contain DINP. As a result of plaintiff's Notice,
26 DEFENDANTS also have actual knowledge of the presence of DINP in the PRODUCTS.

1 31. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
2 sale in or into the State of California cause exposures to DINP, both direct and/or indirect dermal
3 contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

4 32. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
5 continues to cause, exposures to DINP.

6 33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
7 exposes individuals to DINP through direct and indirect dermal contact and/or ingestion.

8 34. DEFENDANTS intend that exposures to DINP from the reasonably foreseeable use of
9 the PRODUCTS will occur by their deliberate, non-accidental participation in the California
10 marketplace.

11 35. The exposures to DINP, caused by DEFENDANTS and endured by consumers and
12 other individuals in California, are not exempt from the “clear and reasonable” warning requirements
13 of Proposition 65.

14 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
15 and other individuals in California who have been, or who will be, exposed to DINP through direct
16 and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.

17 37. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
18 and other individuals, exposed to DINP through dermal contact and ingestion as a result of their use
19 of the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard
20 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
21 or adequate remedy at law.

22 38. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
23 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
24 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are
25 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

PRAYER FOR RELIEF

Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them, as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” to consumers addressing the harms associated with exposures to DINP;

2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California that do not bear a clear and reasonable health hazard warning;

3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred herein; and

5. That the Court grant any further relief as it deems just and equitable.

Dated: January 22, 2025

Respectfully submitted,

SEVEN HILLS LLP

By: _____
Rebecca Jackson
Attorneys for Plaintiff
Keep America Safe and Beautiful