

Evan J. Smith, Esquire (SBN 242352)  
Ryan P. Cardona, Esquire (SBN 302113)  
BRODSKY SMITH  
9465 Wilshire Blvd., Ste. 300  
Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**05/16/2025**  
Clerk of the Court  
BY: WILMA CORRALES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

**CGC-25-625394**

GABRIEL ESPINOZA,  
Plaintiff,

vs.

BACKCOUNTRY.COM, LLC,  
Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part, "[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.

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 Beal professional rescuer canyoneer guide packs sold and/or distributed by defendant Backcountry.com, LLC ("Backcountry" or "Defendant") in California.

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

5           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
6 within California or sell products therein to comply with Proposition 65 regulations. Included in  
7 such regulations is the requirement that businesses must label any product containing a Proposition  
8 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
9 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
10 chemical.

11          5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
12 for up to 365 days to be imposed upon defendants in a civil action for violations of Proposition 65  
13 (up to a maximum civil penalty amount per violation of \$912,000.00). Health & Safety Code §  
14 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions  
15 of a defendant which “violate or threaten to violate” the statute. Health & Safety Code § 25249.7.

16          6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
17 without a requisite exposure warning, Beal professional rescuer canyoneer guide packs (the  
18 “Products”) that expose persons to DINP when used for their intended purpose.

19          7.       Defendant’s failure to warn consumers and other individuals in California of the  
20 health hazards associated with exposure to DINP in conjunction with the sale and/or distribution  
21 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil  
22 penalties described herein.

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

25          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
26 Defendant to provide purchasers or users of the Products with required warnings related to the  
27 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code  
28 § 25249.7(a).

1           10.     Plaintiff further seeks a reasonable award of attorney's fees and costs.

2                                   **PARTIES**

3           11.     Plaintiff is a citizen of the State of California acting in the interest of the general  
4 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
5 improve human health by reducing hazardous substances contained in such items. He brings this  
6 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

7           12.     Defendant Backcountry.com, LLC, through its business, effectively imports,  
8 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
9 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the  
10 State of California. Plaintiff alleges that defendant Backcountry.com, LLC is a "person" in the  
11 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
12 25249.11.

13                                   **VENUE AND JURISDICTION**

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

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

23           15.     This Court has jurisdiction over Defendant because Defendant is either a citizen of  
24 the State of California, has sufficient minimum contacts with the State of California, is registered  
25 with the California Secretary of State as foreign corporations authorized to do business in the State  
26 of California, and/or has otherwise purposefully availed itself of the California market. Such  
27 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
28 permissible with traditional notions of fair play and substantial justice.

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17. 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:

18. 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.”

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

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

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1 in the label, labeling or display as to render it likely to be read and understood by an  
2 ordinary individual under customary conditions of purchase or use.

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

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

11 **FACTUAL BACKGROUND**

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

15 22. The exposures that are the subject of the Notice result from the purchase,  
16 acquisition, handling and recommended use of the Product. The primary route of exposure to the  
17 is through dermal absorption directly through the skin when consumers use, touch, or handle the  
18 Products. Exposure through ingestion will occur by touching the Product with subsequent touching  
19 of the user’s hand to mouth. No clear and reasonable warning is provided with the Products  
20 regarding the health hazards of exposure.

21 23. Defendant has manufactured, processed, marketed, distributed, offered to sell  
22 and/or sold the Products in California since at least December 2, 2024. The Products continue to  
23 be distributed and sold in California without the requisite warning information.

24 24. At all times relevant to this action, Defendant has knowingly and intentionally  
25 exposed users of the Products to DINP without first giving a clear and reasonable exposure  
26 warning to such individuals.

27 25. As a proximate result of acts by Defendant, as a person in the course of doing  
28 business within the meaning of H&S Code § 25249.11, individuals throughout the State of

1 California, including in San Francisco County, have been exposed to DINP without a clear and  
2 reasonable warning on the Products. The individuals subject to the violative exposures include  
3 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
4 the Products.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 26. On July 30, 2024, Plaintiff purchased the Product from Backcountry. At the time  
7 of purchase, Defendant did not provide a Proposition 65 exposure warning for DINP or any other  
8 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described  
9 *supra*.

10 27. The Product was sent to a testing laboratory for phthalate testing to determine the  
11 phthalate content of the Product.

12 28. On October 21, 2024, the laboratory provided the results of its analysis. Results of  
13 this test determined the Product exposes users to DINP (the “Chemical Test Report”).

14 29. Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
15 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
16 foreseeable use of the Product, exposure to DINP will occur at levels that require Proposition 65  
17 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
18 Code of Regulations.

19 30. On December 2, 2024, Plaintiff received from the analytical chemist an exposure  
20 assessment report which concluded that persons in California who use the Products will be exposed  
21 to levels of DINP that require a Proposition 65 exposure warning.

22 31. On December 2, 2024, Plaintiff gave notice of alleged violation of Health and  
23 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens  
24 to DINP from use of the Products without proper warning, subject to a private action to Defendant  
25 and to the California Attorney General’s office and the offices of the County District attorneys and  
26 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
27 violations allegedly occurred.

32. The Notice complied with all procedural requirements of Proposition 65 including 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 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private action.

33. After receiving the Notice, 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 Notice.

34. Plaintiff is commencing this action more than sixty (60) days from the date of the Notice to Defendant, as required by law.

**FIRST CAUSE OF ACTION**

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

35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of the Products.

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

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

39. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since December 2, 2024, continuing until the present, that Defendant has continued to knowingly and intentionally expose California users and consumers of the Products to DINP without providing required warnings under Proposition 65.

40. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Exposure through ingestion will occur by touching the Product with subsequent touching

1 of the user's hand to mouth. No clear and reasonable warning is provided with the Products  
2 regarding the health hazards of exposure.

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

6 42. Defendant has knowledge that the normal and reasonably foreseeable use of the  
7 Products exposes individuals to DINP, and Defendant intends that exposures to DINP will occur  
8 by their deliberate, non-accidental participation in the importation, distribution, sale and offering  
9 of the Products to consumers in California

10 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
11 Complaint.

12 44. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
13 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

14 45. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
15 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
3 relief:

4 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per  
5 day for each violation for up to 365 days in accordance with Health and Safety Code §  
6 25249.7(b) (up to a maximum civil penalty amount per violation of \$912,000.00);

7 B. That the court preliminarily and permanently enjoin Defendant mandating  
8 Proposition 65 compliant warnings on the Products;

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

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

12 Dated: May 16, 2025

BRODSKY SMITH

13 By: 

14 Evan J. Smith (SBN242352)

15 Ryan P. Cardona (SBN302113)

16 9465 Wilshire Boulevard, Suite 300

17 Beverly Hills, CA 90212

18 Telephone: (877) 534-2590

19 Facsimile: (310) 247-0160

20 *Attorneys for Plaintiff*