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9
10 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

11
12 DANIELS SHARPSMART, INC., a)
Delaware corporation)

13)
14 Plaintiff,)

15 v.)

16 KAREN SMITH, Director of the California)
Department of Public Health, in her official)
17 capacity; RONALD PILORIN, Chief of the)
Emergency, Restoration, and Waste)
18 Management Section of the California)
Department of Public Health, in his personal)
19 capacity; ALISON DABNEY, Chief Senior)
20 Environmental Scientist for the Medical)
Waste Management Program of the California)
21 Department of Public Health, in her personal)
22 capacity; and GINGER HILTON,)
Environmental Scientist for the Medical)
23 Waste Management Program of the California)
24 Department of Public Health, in her personal)
capacity,)

25 Defendants.)
26)
27)
28)

Case No. _____

COMPLAINT FOR VIOLATION OF
42 U.S.C. § 1983 AND
DECLARATORY RELIEF;
DEMAND FOR JURY TRIAL

1 Plaintiff Daniels Sharpsmart, Inc. (“Daniels” or “Plaintiff”) alleges as follows:

2 **I. JURISDICTION AND VENUE**

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4 1. This action arises under 42 U.S.C. § 1983; the Commerce Clause of the U.S.
5 Constitution, Article I, Section 8, clause 3; and the Supremacy Clause of the U.S. Constitution,
6 Article VI, paragraph 2. This Court has jurisdiction over this action pursuant to 28 U.S.C.
7 § 1331 (federal question jurisdiction) and 28 U.S.C. § 1343(a)(3) (jurisdiction to redress
8 constitutional violations). This Court is also authorized to issue a declaratory judgment pursuant
9 to 28 U.S.C. §§ 2201, 2202. Jurisdiction arises under these statutes because, as alleged in detail
10 below, Defendants and the California Department of Public Health have violated and threaten to
11 continue violating Daniels’ right to engage in commercial waste treatment transactions outside
12 of California without interference from California agencies and officials. Defendants’ and the
13 Department’s enforcement of California law to transactions taking place wholly outside of
14 California is a violation of the Commerce Clause of the United States Constitution.

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16
17 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because some of
18 the events and omissions giving rise to Daniels’ claims occurred in Fresno, California.

19 **II. PARTIES**

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21 3. Daniels is a Delaware corporation with its principal place of business in Chicago,
22 Illinois. It designs, develops, manufactures, markets, and sells reusable sharps container systems
23 for the disposal of needle-inclusive bio-hazard medical products, such as syringes, blood
24 collection devices, and IVs.

25
26 4. Defendant Karen Smith is the Director of the California Department of Public
27 Health (“Department”) and is being sued in her official capacity. As Director, upon information
28 and belief, Dr. Smith is responsible for enforcement of California’s Medical Waste

1 Management Act (specially including those provisions requiring incineration of certain medical
2 waste), may investigate noncompliance with California’s medical waste treatment laws, and is
3 authorized to impose fines for noncompliance.

4
5 5. Defendant Ronald Pilorin was (and may still be) the Chief of the Department’s
6 Emergency, Restoration, and Waste Management Section, and is being sued in his personal
7 capacity.

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9 6. Defendant Alison Dabney was (and may still be) the Chief Senior Environmental
10 Scientist for the Department’s Medical Waste Management Program, and is being sued in her
11 personal capacity.

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13 7. Defendant Ginger Hilton was (and may still be) an Environmental Scientist for
14 the Department’s Medical Waste Management Program.

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III. GENERAL ALLEGATIONS

8. Among the services provided by Daniels are the transport and treatment of biohazardous medical wastes.

9. When medical wastes are treated within California, they are subject to the Medical Waste Management Act (“MWMA”) (California Health and Safety Code, Division 104, Part 14). Under the MWMA, biohazardous medical wastes must be treated either by incineration at a permitted medical waste treatment facility, or by another method approved by the Department. Nothing in the MWMA indicates that its incineration requirement was intended to apply to waste treated outside of California.

10. For years, no facility permitted to incinerate or otherwise legally treat Daniels’ biohazardous medical wastes existed in California. Thus, Daniels transported its biohazardous medical wastes for treatment at facilities outside of California. Upon information and belief, the

1 non-California facilities treated Daniels' waste pursuant to the laws of the states in which those
2 facilities were located. Unlike California, the laws of the other states did not require waste
3 incineration.

4
5 11. On November 20, 2014, the Department conducted a biannual inspection at
6 Daniels' Fresno, California facility. Daniels thereafter received a letter from Defendant Hilton,
7 copying Defendant Dabney, accusing Daniels of treating medical wastes in Indiana by a method
8 that was not authorized by California law. The letter indicated that all biohazardous medical
9 wastes originating in California must be treated by incineration, even if the laws of other states
10 permitted alternative treatment methods. The letter further indicated that Daniels would be
11 penalized if it did not incinerate all its biohazardous medical wastes.

12
13 12. Daniels responded that the Department could not dictate the method of waste
14 treatment outside of California. Defendant Dabney stated her disagreement in an email to
15 Daniels copied to Defendant Hilton. But at no time did Dabney or any other Defendant provide
16 legal authority for their disagreement.

17
18 13. On April 10, 2015, the Department conducted another inspection of Daniels'
19 Fresno facility. Daniels thereafter received another letter from Defendant Hilton, copying
20 Defendant Dabney. Defendant Hilton took the position that California law (requiring
21 incineration) governed Daniels' treatment of medical wastes in Kentucky, Maryland, North
22 Dakota, Alabama, and Indiana.

23
24 14. In August 2015, the Department issued a Notice of Violation (NOV) to Daniels,
25 signed by Defendant Pilorin. The NOV imposed a \$567,000 penalty against Daniels for using
26 methods other than incineration to treat biohazardous medical wastes outside of California.
27 Daniels is presently pursuing an administrative appeal of the penalty.
28

1 15. To avoid ongoing penalties from or legal action by the Department in connection
2 with its treatment of medical wastes, Daniels began transporting medical wastes to incinerators
3 located in other states, at a significantly higher cost.

4
5 **IV. FIRST CLAIM FOR RELIEF: VIOLATION OF 42 U.S.C. § 1983**

6 **(Count 1: For Injunctive Relief Against Defendant Smith)**

7 16. Daniels incorporates by reference the above paragraphs as though fully set forth
8 herein.

9 17. Daniels is informed and believes, and on such information and belief alleges, that
10 Defendant Smith, in her official capacity, has acted under color of law in subjecting Daniels to
11 administrative penalties, and the threat of future penalties or legal action, by taking the position,
12 and enforcing the Department policy, requiring the treatment of wastes outside of California to
13 be in compliance with California laws.

14
15 18. The conduct of Defendant and the Department deprived Daniels of its rights
16 secured by the Constitution, in particular, to be free of violations of the Commerce Clause to the
17 United States Constitution. The Department and Defendant are in violation of the “dormant”
18 Commerce Clause by regulating commerce occurring wholly outside the borders of California,
19 which commerce has no environmental impact in or upon the citizens of California. The extra-
20 territorial enforcement effort of the Department and Defendant does not produce any local
21 benefit to California or Californians. Moreover, nothing in the MWMA indicates that its
22 incineration requirement was intended to apply to waste treated outside of California.

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24 19. The conduct of the Department and Defendant has had the practical effect of
25 preventing Daniels from engaging in legal commerce with treatment facilities located in and
26 following the laws of other states.
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1 belief, Defendants knew that nothing in the MWMA indicates that its incineration requirement
2 was intended to apply to waste treated outside of California, and Defendants knew that applying
3 the MWMA to waste treatment occurring wholly outside the borders of California would have
4 no environmental impact in or upon the citizens of California and would not produce any local
5 benefit to California or Californians.
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7 25. Upon information and belief, the wrongful conduct of Defendants Hilton,
8 Dabney, and Pilorin was undertaken pursuant to an agreement or meeting of the minds among
9 them, and/or others, to act in concert to violate Daniels' constitutional rights.
10

11 26. As the direct and proximate result of Defendants' wrongful conduct, Daniels has
12 incurred increased costs associated with waste incineration outside of California.
13

14 **V.**

15 **SECOND CLAIM FOR DECLARTORY RELIEF**

16 **PURUSANT TO 28 U.S.C. §§ 2201, 2202**

17 **(Against Defendant Smith)**

18 27. Plaintiff incorporates by reference the above paragraphs as though fully set forth
19 herein.
20

21 28. There is a substantial controversy between Daniels, on one hand, and the
22 Department and Smith, on the other, as to whether Daniels must abide by California law when
23 treating wastes outside of California.
24

25 29. The dispute is of sufficient immediacy because the Department has already
26 imposed penalties against Daniels for its position and has indicated that further penalties or
27 legal action may result upon a reoccurrence.
28

1 30. Defendant Smith's position is incorrect, and its application has resulted in
2 constitutional and economic injury to Daniels.

3 31. Accordingly, the Court should declare that Defendant Smith may not enforce
4 California's Medical Waste Management Act (specially including those provisions requiring
5 incineration of certain medical waste) with respect to wastes treated outside of California.
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Daniels respectfully requests that this Court enter the following relief:

9 1. As to the First Claim for Relief, Count 1, an injunction prohibiting Defendant
10 Smith from the extraterritorial application of California's Medical Waste Management Act
11 against Daniels with respect to its treatment of wastes outside of California;
12

13 2. As to the First Claim for Relief, Count 2, damages according to proof.

14 3. As to the Second Claim for Relief, declaratory judgment, pursuant to 28 U.S.C.
15 § 2201 and Rule 57 of the Federal Rules of Civil Procedure, that Defendant Smith violates the
16 Commerce Clause by the Department's extraterritorial application of California's Medical
17 Waste Management Act with respect to treatment of wastes outside of California.
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19 4. As to all Claims for Relief, fees and costs to the extent permitted by federal law
20 (including but not limited to 42 U.S.C. § 1988), and further relief as this Court deems just and
21 proper.
22

23 Respectfully submitted this 20th day of March 2017,

24 STEPTOE AND JOHNSON LLP

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27 By: /s/ Morgan Hector
28 Jason Levin
Morgan Hector

DEMAND FOR JURY TRIAL

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Plaintiff hereby demands a trial by jury.

STEPTOE AND JOHNSON LLP

By: /s/ Morgan Hector
Jason Levin
Morgan Hector