

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 GABRIEL ESPINOSA,
13 Plaintiff,
14 vs.
15 WATTS WATER TECHNOLOGIES,
16 INC., ORCHARD SUPPLY
17 HARDWARE STORES
18 CORPORATION, and ORCHARD
19 SUPPLY COMPANY, LLC,
20 Defendants.

CASE NO.:
JUDGE **RG15783041**
DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
(Violation of Health & Safety Code §25249.5
et seq.)

21 Plaintiff Gabriel Espinosa, by and through his attorneys, alleges the following cause of
22 action in the public interest of the citizens of the State of California.

23 **BACKGROUND OF THE CASE**

24 1. Plaintiff Gabriel Espinosa ("Plaintiff" or "Espinosa"), brings this representative
25 action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water
26 and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq*
27 ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business
28 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.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People's right to be informed of the health
3 hazards caused by exposures to di(2-ethylhexyl)phthalate ("DEHP"), Diisononyl phthalate
4 ("DINP"), and/or Di-isodecyl phthalate ("DIDP") toxic chemicals found in auto shutoff
5 connectors and/or vinyl tubing, sold, and/or distributed by defendants Watts Water Technologies,
6 Inc. ("Watts"), Orchard Supply Hardware Stores Corporation, and/or Orchard Supply Company,
7 LLC (collectively, "OSH") (Watts and OSH are collectively referred to herein as, "Defendants")
8 in California.

9 3. DEHP is a harmful chemical known to the State of California to cause both cancer
10 and reproductive toxicity, developmental, male. On January 1, 1988, the State of California
11 listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of
12 California listed DEHP as a chemical known to cause developmental male reproductive toxicity.
13 DEHP has come under the purview of Proposition 65 regulations since January 1, 1988. Cal.
14 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

15 4. DINP is a harmful chemical known to the State of California to cause cancer. On
16 December 20, 2013, the State of California listed DINP as a chemical known to cause cancer and
17 it has come under the purview of Proposition 65 regulations since that time and it has come
18 under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §
19 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

20 5. DIDP is a harmful chemical known to the State of California to cause
21 reproductive toxicity. On April 20, 2007, the State of California listed DIDP as a chemical
22 known to the State to cause reproductive toxicity and it has come under the purview of
23 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
24 Code §§ 25249.8 & 25249.10(b).

25 6. Proposition 65 requires all businesses with ten (10) or more employees that
26 operate within California or sell products therein to comply with Proposition 65 regulations.
27 Included in such regulations is the requirement that businesses must label any Proposition 65
28

1 listed chemical with a “clear and reasonable” warning before knowingly or intentionally
2 exposing it to any person.

3 7. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
4 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
5 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
6 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
7 Code § 25249.7.

8 8. Plaintiff alleges that Defendants distribute, manufacture, produce, import, sell,
9 and/or offer for sale, without the required warning, auto shutoff connectors and/or vinyl tubing in
10 California containing DEHP, DINP, and/or DIDP. These products include, but are not limited
11 to, (i) *Floodsafe Auto Shutoff Connector, UPC#098268481075, LFMFS SC20-68, 51000052*; and
12 (ii) *Watts Braided Vinyl Tubing, 7/8”x5/8”x10’, UPC#048643120143, SBVMK10, 42142810*
13 (the “Products”).

14 9. Defendants’ failure to warn consumers, workers, and other individuals in
15 California of the health hazards associated with exposure to DEHP, DINP, and/or DIDP in
16 conjunction with the sale, manufacture, and/or distribution of the Products is a violation of
17 Proposition 65 and subjects Defendants to the enjoinder and civil penalties described herein.

18 10. Plaintiff seeks civil penalties against Defendants for their violations of
19 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

20 11. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
21 Defendants to provide purchasers or users of the Product(s) with the required warnings related to
22 the dangers and health hazards associated with exposure to DEHP, DINP, and/or DIDP pursuant
23 to Health and Safety Code § 25249.7(a).

24 **PARTIES**

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

1 13. Defendant Watts, a Delaware corporation, designs, manufactures, and sells a line
2 of products to the water regulation and control markets. Through its business, Watts effectively
3 manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of
4 California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or
5 offers the Products for sale or use in the State of California. Watts maintains a registered agent
6 for service of process at c/o The Corporation Trust Company, Corporation Trust Center, 1209
7 Orange Street, Wilmington, DE 19801. Watts is a person in the course of doing business within
8 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

9 14. Defendant Orchard Supply Hardware Stores Corporation operates a chain of retail
10 stores, and through that business effectively manufactures, imports, distributes, sells, and/or
11 offers the Products for sale or use in California, or it implies by its conduct that it manufactures,
12 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
13 Orchard Supply Hardware Stores Corporation maintains a registered agent for service of process
14 at c/o CT Corporation System, 818 West Seventh Street, 2nd Floor, Los Angeles, CA 90017.
15 Orchard Supply Hardware Stores Corporation is a person in the course of doing business within
16 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

17 15. Defendant Orchard Supply Company, LLC operates a chain of retail stores, and
18 through that business effectively manufactures, imports, distributes, sells, and/or offers the
19 Products for sale or use in California, or it implies by its conduct that it manufactures, imports,
20 distributes, sells, and/or offers the Products for sale or use in the State of California. Orchard
21 Supply Company, LLC maintains a registered agent for service of process at c/o Corporation
22 Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808. Orchard Supply
23 Company, LLC is a person in the course of doing business within the meaning of Health &
24 Safety Code sections 25249.6 and 25249.11.

25 16. Upon information and belief, Plaintiff avers that each Defendant acted as an
26 employee, servant, or agent of each other Defendant at all times relevant to this action. Plaintiff
27 further avers that in conducting the activities alleged in this Complaint, all Defendants acted
28 within the scope of their agency or similarly situated relationship as toward one another.

1 Therefore all Defendants acted with consent, permission, and authorization of each other in
2 relation to all acts related to the scope of this Complaint.

3 17. Upon information and belief, Plaintiff avers that at all relevant times herein, each
4 Defendant was a person doing business within the meaning of Health and Safety Code §
5 25249.11(b) and that each and every Defendant had ten (10) or more employees at all relevant
6 times.

7 **VENUE AND JURISDICTION**

8 18. Venue is proper in the County of Alameda, because one or more of the instances
9 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
10 conducted, and continue to conduct, business in the County of Alameda with respect to the
11 Product.

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

17 20. This Court has jurisdiction over the Defendants as each Defendant either is a
18 citizen of the State of California, has sufficient minimum contacts with the State of California, is
19 registered with the California Secretary of State as foreign corporations authorized to do business
20 in the State of California, and/or have otherwise purposefully availed themselves of the
21 California market. Such purposeful availment has rendered the exercise of jurisdiction by
22 California courts consistent and permissible with traditional notions of fair play and substantial
23 justice.

24 **SATISFACTION OF NOTICE REQUIREMENTS**

25 21. On June 10, 2015, Plaintiff gave notice of alleged violations of Health and Safety
26 Code § 25249.6 to Defendants, concerning the exposure of California citizens to DEHP, DINP,
27 and/or DIDP contained in the Products without proper warning, subject to a private action to the
28 Defendants and to the California Attorney General's office and the offices of the County District

1 attorneys and City Attorneys for each city with a population greater than 750,000 persons
2 wherein the herein violations allegedly occurred.

3 22. The notice complied with all procedural requirements of Proposition 65 including
4 the attachment of a Certificates of Merit affirming that Plaintiff's counsel had consulted with at
5 least one person with relevant and appropriate expertise who reviewed relevant data regarding
6 DEHP, DINP, and/or DIDP exposure, and that counsel believed there was meritorious and
7 reasonable cause for a private action.

8 23. After receiving Plaintiff's notice, and to Plaintiff's best information and belief,
9 none of the noticed appropriate public enforcement agencies have commenced and diligently
10 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
11 violations which are the subject of Plaintiff's notice of violation.

12 24. Plaintiff is commencing this action more than sixty (60) days from the date of his
13 notice to Defendants, as required by law.

14 **FIRST CAUSE OF ACTION**

15 **(By Plaintiff against all Defendants for the Violation of Proposition 65)**

16 25. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 24 of
17 this complaint as though fully set forth herein.

18 26. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
19 and/or retailer of the Products.

20 27. The Products contain DEHP, DINP, and/or DIDP, hazardous chemicals found on
21 the Proposition 65 list of a chemical known to be hazardous to human health.

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

23 29. Plaintiff, based on his best information and belief, avers that at all relevant times
24 hereto, and at least since May 12, 2015 continuing until the present, that Defendants have
25 continued to knowingly and intentionally expose California users and consumers of the
26 Product(s) to DEHP, DINP, and/or DIDP without providing required warnings under Proposition
27 65.

28

1 30. The exposures that are the subject of this notice result from the purchase,
2 acquisition, handling and recommended use of the product. Consequently, the primary route of
3 exposure to these chemicals is through dermal absorption through direct contact with the tubing
4 during installation, dermal absorption of water containing DEHP, DINP, and DIDP that has
5 leached from the tubing, and ingestion of DEHP, DINP, and DIDP contaminated water or use of
6 materials contaminated by the water discharged from the tubing. Direct dermal exposure
7 through the user's hands is likely to occur when the user manipulates the braided tubing during
8 installation. Another route of dermal exposure is through DEHP, DINP, and DIDP that has
9 leached into the water passing through the braided tubing if used on a sink supply line. This
10 water containing DEHP, DINP, and DIDP is discharged from the tubing be absorbed through the
11 surface area of the user's exposed skin that comes into contact with the water. The concentration
12 of DEHP, DINP, and DIDP leaching into the water from the braided tubing is dependent upon
13 the flow rate of water through the hose and the temperature of the water. Direct ingestion of
14 DEHP, DINP, and DIDP containing water is possible if consumed directly or used for cooking.
15 While direct mouthing of the product does not seem likely, indirect exposure can occur if
16 discharged water containing DEHP, DINP, and DIDP is ingested directly or absorbed to kitchen
17 items when the tubing is used on a dishwasher or sink faucet. Water containing DEHP, DINP,
18 and DIDP can be expected to leave DEHP residues absorbed on the surface of items washed with
19 DEHP, DINP, and DIDP containing water. When these contaminated items are used during
20 eating or drinking, direct ingestion of DEHP residues is possible.

21 31. Plaintiff, based on his best information and belief, avers that such exposures will
22 continue every day until clear and reasonable warnings are provided to Product purchasers and
23 users or until this known toxic chemical is removed from the product.

24 32. Defendants have knowledge that the normal and reasonably foreseeable use of the
25 Product exposes individuals to DEHP, DINP, and/or DIDP, and Defendants intend that
26 exposures to DEHP, DINP, and/or DIDP will occur by their deliberate, non-accidental
27 participation in the manufacture, importation, distribution, sale and offering of the Product to
28 consumers in California

1 33. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 Complaint without success.

3 34. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
4 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per
5 violation.

6 35. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
7 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against the Defendant and requests the
11 following relief:

- 12 A. That the court assess civil penalties against each and every Defendant in
13 the amount of \$2,500 per day for each violation in accordance with Health
14 and Safety Code § 25249.7(b);
15 B. That the court preliminarily and permanently enjoin all Defendants
16 mandating Proposition 65 compliant warnings on the Products;
17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
18 D. That the court grant any further relief as may be just and proper.
19

20 Dated: August 21, 2015

BRODSKY & SMITH, LLC

21 By: 
22

Evan J. Smith (SBN242352)

Ryan P. Cardona (SBN302113)

23 9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

24 Telephone: (877) 534-2590

25 Facsimile: (310) 247-0160

26 *Attorneys for Plaintiff*