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ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 14 2017

CLERK OF THE SUPERIOR COURT



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 v.  
14 WESTFIELD OUTDOOR, INC.,  
15 Defendant.

Case No.: **RG 17849343**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Violation of Health & Safety Code §25249.5  
*et seq.*)

17 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,  
18 alleges the following cause of action in the public interest of the citizens of the State of  
19 California.

**BACKGROUND OF THE CASE**

21 1. Plaintiff brings this representative action on behalf of all California citizens to  
22 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
23 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,  
24 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
25 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
26 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

BY F

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 exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
4 Ozark Trail Camp Sinks & Worktops sold and/or distributed by defendant Westfield Outdoor,  
5 Inc. ("Westfield" or "Defendant") in California.

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

12           4.       Proposition 65 requires all businesses with ten (10) or more employees that  
13 operate within California or sell products therein to comply with Proposition 65 regulations.  
14 Included in such regulations is the requirement that businesses must label any product containing  
15 a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and  
16 intentionally" exposing any person to it.

17           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
20 the actions of a defendant which "violate[s] or threaten[s] to violate" the statute. Health &  
21 Safety Code § 25249.7.

22           6.       Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
23 and/or offers for sale, without the required warning, Ozark Trail Camp Sinks & Worktops, UPC  
24 No. 8 44093 04553 7 ("Product" or "Products") in California containing DEHP.

25           7.       Defendant's failure to warn consumers and other individuals in California of the  
26 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,  
27 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the  
28 enjoinder and civil penalties described herein.

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

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

## PARTIES

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

11. Defendant Westfield is one of the largest, most trusted suppliers of outdoor camping products in the United States. Through its business, Westfield effectively manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California. Westfield maintains an agent for service of process at c/o c/o Corporation Services of Nevada, Inc., PO Box 80928, Las Vegas, NV 89180-0928.

12. Defendant Westfield is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

## VENUE AND JURISDICTION

13. Venue is proper in the County of Alameda because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendant conducted, and continues to conduct, business in the County of Alameda with respect to the Product.

14. This Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
2 this Court has jurisdiction over this lawsuit.

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

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On October 6, 2016, Plaintiff gave notice of alleged violation of Health and  
11 Safety Code § 25249.6 (the "Notice") to Westfield concerning the exposure of California citizens  
12 to DEHP contained in the Product without proper warning, subject to a private action to  
13 Westfield and to the California Attorney General's office and the offices of the County District  
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
15 wherein the herein violations allegedly occurred.

16 17. The Notice complied with all procedural requirements of Proposition 65 including  
17 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
18 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
19 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a  
20 private action.

21 18. After receiving the Notice, and to Plaintiff's best information and belief, none of  
22 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
23 a cause of action against Westfield under Proposition 65 to enforce the alleged violations which  
24 are the subject of Plaintiff's notice of violation.

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

27 **FIRST CAUSE OF ACTION**

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

1           20.     Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of  
2 this complaint as though fully set forth herein.

3           21.     Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
4 and/or retailer of the Product.

5           22.     The Product contains DEHP, a hazardous chemical found on the Proposition 65  
6 list of chemicals known to be hazardous to human health.

7           23.     The Product does not comply with the Proposition 65 warning requirements.

8           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
9 herein, and at least since June 16, 2016, continuing until the present, that Westfield has  
10 continued to knowingly and intentionally expose California users and consumers of the Product  
11 to DEHP without providing required warnings under Proposition 65.

12           25.     The exposures that are the subject of the Notice result from the purchase,  
13 acquisition, handling and recommended use of the product. Consequently, the primary route of  
14 exposure to these chemicals is through dermal exposure. Dermal exposure can occur through the  
15 user's hands when the user assembles, disassembles, and manipulates the camp sink and drain  
16 hose. If the camping sink is stored or transported in a carrier, DEHP that leaches from the camps  
17 sink may contaminate other articles contained within the carrier bag that are subsequently  
18 handled by the user. DEHP from the camp sink can be expected to leach into the water held in  
19 the sink basin. This water containing DEHP can subsequently be absorbed through the skin  
20 when the user washes items in the sink. Aqueous DEHP skin permeation rates have been  
21 reported to be faster than neat DEHP permeation. DEHP that leaches from the sink mat may  
22 contaminate other articles contained within the sink (e.g. dishware, silverware, glassware, etc.)  
23 that are subsequently handled or may come into contact with food or drink that can be ingested  
24 during a meal. Examples include, but are not limited to, use of DEHP contaminated silverware  
25 that is placed in the mouth, DEHP contaminated dishware that subsequently contaminates food  
26 that is ingested, or DEHP contaminated glassware that subsequently contaminates beverages that  
27 are ingested. Finally, some amount of exposure through ingestion can occur by handling the  
28 product with subsequent touching of the users hand to mouth.



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