

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*

ENDORSED  
 FILED  
 ALAMEDA COUNTY

JUL 1 8 2013

CLERK OF THE SUPERIOR COURT  
 By AMRIT KHAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF ALAMEDA

10 GABRIEL ESPINOSA,

11 Plaintiff,

12 vs.

13 NATIONAL MANUFACTURING, CO.,  
 14 SPECTRUM BRANDS, INC.,  
 15 HARDWARE & APARTMENT  
 16 SUPPLY CO., INC.,

17 *Defendants.*

Case No.:

**RG19027529**

**COMPLAINT FOR CIVIL PENALTIES AND  
 INJUNCTIVE RELIEF**

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

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

**BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
 27 of the citizens of the State of California to enforce the People's right to be informed of the health  
 28 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

1 National hanging screw hooks sold and/or distributed by defendants National Manufacturing Co.  
2 (“National Manufacturing”), Spectrum Brands, Inc. (“Spectrum Brands”) and Hardware &  
3 Apartment Supply Co., Inc. (“Hardware & Apartment Supply”) (collectively, “Defendants”) in  
4 California.

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

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

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

21 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in  
22 California, without a requisite exposure warning, National hanging screw hooks (the “Products”)  
23 that expose persons to DEHP.

24 7. Defendants’ failure to warn consumers and other individuals in California of the  
25 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution  
26 of the Products is a violation of Proposition 65 and subjects Defendants to the injunction and  
27 civil penalties described herein.

8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b). Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code § 25249.7(a)

## PARTIES

9. 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).

10. Defendant National Manufacturing, through its business, effectively imports, distributes, sells, and/or offers the Products 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 Products for sale or use in the State of California. Plaintiff alleges that defendant National Manufacturing is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

11. Defendant Spectrum Brands, through its business, effectively imports, distributes, sells, and/or offers the Products 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 Products for sale or use in the State of California. Plaintiff alleges that defendant Spectrum Brands is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

12. Defendant Hardware & Apartment Supply, through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Hardware & Apartment Supply is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

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

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

## 17

16. On July 25, 2018, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to DEHP contained in the Products without proper warning, subject to a private action to Defendants and to the California Attorney General’s office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

17. 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 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private action.





Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

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