1 2 3 4 5	9595 Wilshire Blvd., Ste. 900 Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160	ENDORSED FILED ALAMEDA COUNTY  JUL J & 2013  CLERK OF THE SUBENIOR COUNTY  Ey_AMPIT KHAN
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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF ALAMEDA	
		Case No.: RG19027529
10	GABRIEL ESPINOSA,	COMPLAINT FOR CIVIL PENALTIES AND
11	Plaintiff,	INJUNCTIVE RELEIF
12	vs,	(Violation of Health & Safety Code § 25249.5 et
13	NATIONAL MANUFACTURING, CO., SPECTRUM BRANDS, INC.,	seq.)
14	HARDWARE & APARTMENT	
15	SUPPLY CO., INC.,	
16	Defendants.	Į.
17	Plaintiff Gabriel Espinosa ("Plaintiff"), by and through his attorneys, alleges the	
18	following cause of action in the public interest of the citizens of the State of California.	
19	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	
	individual to a chemical known to the state to cause cancer or reproductive toxicity without first	
24	giving clear and reasonable warning to such individual". Health & Safety Code § 25249.6.	
25	2. This complaint is a representative action brought by Plaintiff in the public interest	
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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	
	COMPLAINT FOR CIVIL PENALTIES	AND INHINCTIVE DELETE AND ATTOMOS
	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF – VIOLATION OF HEALTH & SAFETY CODE §25249.5	

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

- 3. DEHP is a harmful chemical known to the State of California to cause cancer and reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to cause reproductive toxicity.
- 4. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to it.
- 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute. Health & Safety Code § 25249.7.
- 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in California, without a requisite exposure warning, National hanging screw hooks (the "Products") that expose persons to DEHP.
- 7. Defendants' failure to warn consumers and other individuals in California of the health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinment and 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.
- 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.

# VENUE AND JURISDICTION

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- 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 Defendants conducted, and continue to conduct, business in the County of Alameda with respect to the Products.
- 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.

#### SATISFACTION OF NOTICE REQUIREMNTS

- 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.

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- 18. 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 Defendants under Proposition 65 to enforce the alleged violations which are the subject of the Notice.
- 19. Plaintiff is commencing this action more than sixty (60) days from the date of the Notice to Defendants, as required by law.

### FIRST CAUSE OF ACTION

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

- 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of this complaint as though fully set forth herein.
- 21. Defendants have, at all times mentioned herein, acted as either the manufacturer, distributer, and/or retailer of the Product.
- 22. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.
  - 23. The Product does not comply with the Proposition 65 warning requirements.
- 24. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since July 25, 2018, continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Product to DEHP without providing required warnings under Proposition 65.
- 25. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the Product. Consequently, the primary route of exposure to these chemicals is through direct contact. Direct contact between the Product and the user's bare hands can occur during installation of the Product and through manipulation of the Product. Should the user manipulate the Product with wet hands, or the curtain becomes wet, aqueous DEHP skin permeation rates are faster than neat DEHP permeation. DEHP that leaches from the Product can migrate on contact with other surfaces. Finally, while mouthing of the Product does not seem likely, some amount of exposure through ingestion can occur by touching the Product, with subsequent touching of the user's hand to mouth.