

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

5 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

OCT 11 2019

CLERK OF THE SUPERIOR COURT
By M. Williams

Deputy

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

Case No.: **HG 19039386**

10 ANTHONY FERREIRO,
11 Plaintiff,

12 vs.

13 WEST MARINE, INC.,
14 Defendant.

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in Lalizas
27 Rectangular Flexible Water Tanks sold and/or distributed by defendant West Marine Inc. ("West
28 Marine" or "Defendant") in California.

- 1 -

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF - VIOLATION OF
HEALTH & SAFETY CODE §25249.5

1 continued to knowingly and intentionally expose California users and consumers of the Product
2 to DINP without providing required warnings under Proposition 65.

3 25. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, handling and recommended use of the Product. Consequently, the primary route of
5 exposure to these chemicals is through dermal exposure. Dermal exposure to DINP through the
6 user's hands can occur when the water tank is handled. Should the water tank come into contact
7 with water or humidity, or the wearer touch the water tank with wet, bare hands, aqueous
8 HMWP skin permeation rates have been reported to be faster than neat HMWP permeation. If
9 the water tank is stored or transported in a carrier, DINP from the water tank can contaminate the
10 liquids. When DINP contaminated liquids are ingested, direct ingestion of DINP will result.
11 Finally, while mouthing of the product does not seem likely, some amount of exposure through
12 ingestion can occur by handling the water tank with subsequent touching of the user's hand to
13 mouth.

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

17 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
18 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
19 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
20 and offering of the Products to consumers in California.

21 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
22 Complaint.

23 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
24 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

25 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
26 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

27 **PRAYER FOR RELIEF**

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Dated: October 11, 2019

BRODSKY & SMITH, LLC
By: 
Evan J. Smith (SBN242352)
Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff