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ENDORSED  
FILED  
ALAMEDA COUNTY  
NOV 13 2019

CLERK OF THE SUPERIOR COURT  
By [Signature]  
JAMIE THOMAS, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

GABRIEL ESPINOSA,

Plaintiff,

vs.

CWI, INC., JPC PRODUCTS, LLC,

Defendants.

Case No.:

**RG19042915**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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

**BACKGROUND OF THE CASE**

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part, "[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 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

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

1 Ease trash bag holders sold and/or distributed by defendant CWI, Inc. (“CWI”) and JPC  
2 Products, LLC (“JPC Products”) (collectively, “Defendants”) in California.

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

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

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

17 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in  
18 California, without a requisite exposure warning, Trash-Ease trash bag holders (the “Products”)  
19 that expose persons to DINP.

20 7. Defendants’ failure to warn consumers and other individuals in California of the  
21 health hazards associated with exposure to DINP in conjunction with the sale and/or distribution  
22 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and  
23 civil penalties described herein.

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

26 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
27 Defendants to provide purchasers or users of the Products with required warnings related to the  
28

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety  
2 Code § 25249.7(a).

3 **PARTIES**

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

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

13 12. Defendant JPC Products, through its business, effectively manufactures, imports,  
14 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
15 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale  
16 or use in the State of California. Plaintiff alleges that defendant JPC Products is a “person” in the  
17 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
18 25249.11.

19 **VENUE AND JURISDICTION**

20 13. Venue is proper in the County of Alameda because one or more of the instances  
21 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants  
22 conducted, and continue to conduct, business in the County of Alameda with respect to the  
23 Products.

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

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

8                               **SATISFACTION OF NOTICE REQUIREMENTS**

9           16.     On January 22, 2019, Plaintiff gave notice of alleged violation of Health and  
10 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California  
11 citizens to DINP contained in the Products without proper warning, subject to a private action to  
12 Defendants and to the California Attorney General's office and the offices of the County District  
13 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
14 wherein the herein violations allegedly occurred.

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

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

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

26                               **FIRST CAUSE OF ACTION**

27                               **(By Plaintiff against Defendants 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.     Defendants have, at all times mentioned herein, acted as manufacturer, distributor,  
4 and/or retailer of the Products.

5           22.     The Products contain DINP, a hazardous chemical found on the Proposition 65  
6 list of chemicals known to be hazardous to human health.

7           23.     The Products do 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 January 22, 2019, continuing until the present, that Defendants have  
10 continued to knowingly and intentionally expose California users and consumers of the Products  
11 to DINP 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 Products. Consequently, the primary route of  
14 exposure to these chemicals is through dermal exposure. Dermal exposure through the user's  
15 hands can occur during routine handling of the Products. If the Products are stored or transported  
16 in a carrier, DINP that leaches from the Products may contaminate other articles contained  
17 within these closed spaces that are subsequently handled, worn, mouthed, or consumed. Finally,  
18 some amount of exposure through ingestion can occur by handling the Products with subsequent  
19 touching of the user's hand to mouth.

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

23           27.     Defendants have knowledge that the normal and reasonably foreseeable use of the  
24 Products expose individuals to DINP, and Defendants intend that exposures to DINP will occur  
25 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
26 sale and offering of the Products to consumers in California.

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

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

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

## **PRAYER FOR RELIEF**

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

- A. That the court assess civil penalties against each 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 Defendants 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: November 12, 2019

~~BRODSKY & SMITH, LLC~~

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