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8 *Attorneys for Plaintiff*

9 **ENDORSED**  
10 **FILED**  
11 **ALAMEDA COUNTY**  
12 **SEP 28 2020**

13 CLERK OF THE SUPERIOR COURT  
14 By *J. Thomas*  
15 **JAMIE THOMAS, Deputy**

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF ALAMEDA

18 Case No.: **RG20076559**

19 **COMPLAINT FOR CIVIL PENALTIES AND**  
20 **INJUNCTIVE RELIEF**

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

23 GABRIEL ESPINOZA,  
24 Plaintiff,  
25 vs.  
26 ROSS STORES, INC.,  
27 Defendant.

28 Plaintiff Gabriel Espinoza ("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 di(2-ethylhexyl) phthalate (DEHP) and/or diisononyl phthalate (DINP), toxic chemicals found in bags/totes/cases sold and/or distributed by defendant Ross Stores, Inc. ("Ross" or the "Defendant") in California.

Filed By Fax

1           3.       DEHP is a harmful chemical known to the State of California to cause cancer and  
2 reproductive toxicity, and DINP is a harmful chemical known to the State of California to cause  
3 cancer. On January 1, 1988 (DEHP) and on December 20, 2013 (DINP), the State of California  
4 listed DEHP and DINP as chemicals known to the State to cause cancer and each chemical has  
5 come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §  
6 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of  
7 California listed DEHP as a chemical known to cause reproductive toxicity.

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

13           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
14 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
15 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
16 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
17 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
18 25249.7.

19           6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
20 without a requisite exposure warning, bags/totes/cases (the “Products”) that expose persons to  
21 DEHP and/or DINP.

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

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



1 of California, and/or has otherwise purposefully availed itself of the California market. Such  
2 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
3 permissible with traditional notions of fair play and substantial justice.

#### 4 STATUTORY BACKGROUND

5 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
6 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
7 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

8 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
9 “clear and reasonable warning” before being exposed to substances listed by the State of California  
10 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

11 No person in the course of doing business shall knowingly and intentionally expose any  
12 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
13 first giving clear and reasonable warning to such individual...

14 19. An exposure to a chemical in a consumer product is one “which results from a  
15 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
16 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
17 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
18 shall provide a warning to any person to whom the product is sold or transferred unless the product  
19 is packaged or labeled with a clear and reasonable warning.”

20 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
21 more of the following methods individually or in combination:<sup>1</sup>

22 a. A warning that appears on a product’s label or other labeling.

23 b. Identification of the product at the retail outlet in a manner which provides  
24 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
25 thereof.

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26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,  
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet  
3 with such conspicuousness, as compared with other words, statements, designs, or devices  
4 in the label, labeling or display as to render it likely to be read and understood by an  
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free  
7 information services, or any other system that provides clear and reasonable warnings.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the  
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

#### 14 **FACTUAL BACKGROUND**

15 22. On January 1, 1988 (DEHP) and on December 20, 2013 (DINP), the State of  
16 California listed DEHP and DINP as chemicals known to the State to cause cancer and each  
17 chemical has come under the purview of Proposition 65 regulations since that time. Cal. Code  
18 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003,  
19 the State of California listed DEHP as a chemical known to cause reproductive toxicity.

20 23. The consumer exposures that are the subject of this Complaint result primarily from  
21 dermal absorption. Users can be exposed to DEHP/DINP by dermal absorption through direct skin  
22 contact with the Products during routine use when contacted with bare hands. If the Products are  
23 contacted with wet hands or comes into contact with wet skin, DEHP/DINP skin permeation rates  
24 from aqueous solutions are faster than neat DEHP/DINP permeation. Items placed inside the  
25 Products can absorb DEHP/DINP that can be subsequently handled, held in direct contact with  
26 skin, mouthed, or ingested by the user. DEHP from the Products can absorb to clothes, bedding  
27 and assorted other items placed inside the Products and these items will become a source of  
28 DEHP/DINP dermal exposure when worn, handled, or used. If the Products are stored or

1 transported in a carrier, DEHP/DINP that leaches from the Products may contaminate other articles  
2 contained within these closed spaces are subsequently handled, worn, mouthed, or consumed.  
3 Finally, while direct mouthing of the Products does not seem likely, some amount of exposure  
4 through ingestion can occur by touching of the user's hand to mouth.

5 24. Defendant has marketed, distributed, offered to sell and/or sold the Products in  
6 California since at least August of 2019. The Products continue to be distributed and sold in  
7 California without the requisite warning information.

8 25. At all times relevant to this action, Defendant has knowingly and intentionally  
9 exposed users and/or consumers of the Products to DEHP/DINP without first giving a clear and  
10 reasonable exposure warning to such individuals.

11 26. As a proximate result of acts by Defendant, as a person in the course of doing  
12 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
13 California, including in Alameda County, have been exposed to DEHP/DINP without a clear and  
14 reasonable warning on the Products. The individuals subject to the violative exposures include  
15 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
16 the Products.

#### 17 SATISFACTION OF NOTICE REQUIREMENTS

##### 18 *The Alleged Violations of Health and Safety Code § 25249.6 to Ross*

19 27. On August 19, 2019, Plaintiff gave notice of alleged violation of Health and Safety  
20 Code § 25249.6 (a "Notice of Violation") to Defendant concerning the exposure of California  
21 citizens to DEHP contained in the Kids 'N Play building blocks, UPC # 8675014131006 – zippered  
22 storage/handling case/bag without proper warning, subject to a private action to Defendant and to  
23 the California Attorney General's office and the offices of the County District attorneys and City  
24 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
25 violations allegedly occurred. See attached at Exhibit "A" a true and correct copy of the August  
26 19, 2019 Notice of Violation.

27 28. On November 25, 2019, Plaintiff gave notice of alleged violation of Health and  
28 Safety Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP

1 contained in the Lavender Lane sheet set, RN # 157170 8675014131006 – zippered  
2 storage/handling case/bag without proper warning, subject to a private action to Defendant and to  
3 the California Attorney General’s office and the offices of the County District attorneys and City  
4 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
5 violations allegedly occurred. See attached at Exhibit “B” a true and correct copy of the November  
6 25, 2019 Notice of Violation.

7 29. On January 31, 2020, Plaintiff gave notice of alleged violation of Health and Safety  
8 Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP contained  
9 in the Easy Living sheet set, RN # 145321, UPC # 813855027197 – zippered storage/handling  
10 case/bag without proper warning, subject to a private action to Defendant and to the California  
11 Attorney General’s office and the offices of the County District attorneys and City Attorneys for  
12 each city with a population greater than 750,000 persons wherein the herein violations allegedly  
13 occurred. See attached at Exhibit “C” a true and correct copy of the January 31, 2020 Notice of  
14 Violation.

15 30. On February 4, 2020, Plaintiff gave notice of alleged violation of Health and Safety  
16 Code § 25249.6 to Defendant concerning the exposure of California citizens to DINP contained in  
17 the Ed Hardy Skin Essentials, MFG # 20190927, Batch # AER361297 – zippered storage/handling  
18 case/bag without proper warning, subject to a private action to Defendant and to the California  
19 Attorney General’s office and the offices of the County District attorneys and City Attorneys for  
20 each city with a population greater than 750,000 persons wherein the herein violations allegedly  
21 occurred. See attached at Exhibit “D” a true and correct copy of the February 4, 2020 Notice of  
22 Violation.

23 31. The Notices of Violation described herein are collectively referred to as, the  
24 “Notices.”

25 32. The Notices complied with all procedural requirements of Proposition 65 including  
26 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
27 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
28

1 DEHP/DINP exposure, and that counsel believed there was meritorious and reasonable cause for  
2 a private action.

3 33. After receiving the Notices, and to Plaintiff's best information and belief, none of  
4 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
5 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
6 the subject of the Notices.

7 34. Plaintiff is commencing this action more than sixty (60) days from the date of the  
8 Notices to Defendant, as required by law.

9 35. On April 6, the Judicial Council first adopted emergency rule 9 to suspend statutes  
10 of limitation on all civil cases until 90 days after Governor Newsom lifts the state of emergency  
11 related to the COVID-19 pandemic. On May 29, 2020 the Judicial Council approved a revision to  
12 emergency rule 9 regarding the statutes of limitations for filing civil cases during the COVID-19  
13 pandemic. The Council amended emergency rule 9 by circulating order so that it is no longer tied  
14 to the state of emergency declaration. The new rule suspends from April 6, 2020 to October 1,  
15 2020 the statutes of limitations and repose for civil causes of action that exceed 180 days. The rule  
16 is broad in scope and applies to all civil causes of action.

17 **FIRST CAUSE OF ACTION**

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

19 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of  
20 this Complaint as though fully set forth herein.

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

23 38. The Products contain DEHP/DINP, hazardous chemicals found on the Proposition  
24 65 list of chemicals known to be hazardous to human health.

25 39. The Products do not comply with the Proposition 65 warning requirements.

26 40. Plaintiff, based on his best information and belief, avers that at all relevant times  
27 herein, and at least since August 19, 2019, continuing until the present, that Defendant has  
28



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

3 41. The exposures that are the subject of the Notices result from the purchase,  
4 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
5 exposure to these chemicals is through dermal absorption. are faster than neat DEHP/DINP  
6 permeation. Items placed inside the Products can absorb DEHP/DINP that can be subsequently  
7 handled, held in direct contact with skin, mouthed, or ingested by the user. DEHP/DINP from the  
8 Products can absorb to clothes, bedding and assorted other items placed inside the Products and  
9 these items will become a source of DEHP/DINP dermal exposure when worn, handled, or used.  
10 If the Products are stored or transported in a carrier, DEHP/DINP that leaches from the Products  
11 may contaminate other articles contained within these closed spaces are subsequently handled,  
12 worn, mouthed, or consumed. Finally, while direct mouthing of the Products does not seem likely,  
13 some amount of exposure through ingestion can occur by touching of the user's hand to mouth.

14 42. 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 purchasers and users of the  
16 Products or until this known toxic chemical is removed from the Products.

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

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

23 45. 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 46. 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.

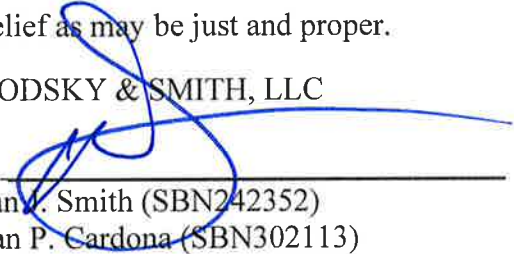
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant 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 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) 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, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: September 25, 2020

BRODSKY & SMITH, LLC

By:   
\_\_\_\_\_  
Evan V. 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*

# EXHIBIT “A”

LAW OFFICES  
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BALA CYNWYD, PA 19004

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516.741.4977

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9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212  
877.534.2590

August 19, 2019

esmith@brodskysmith.com

President/CEO Shen Hua International Ltd. 16/F Rykadan Capital Tower 135 Hoi Bun Road, Kwun Tong, Kowloon, Hong Kong China	President/CEO Ross Stores, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
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AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinosa ("Espinosa"), 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.

With respect to the product identified below, Espinosa has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinosa sixty (60) days after effective service of this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Shen Hua International Ltd.  
Ross Stores, Inc.

**Product Category/Type:** The type of product causing this violation is:

<i>Product<sup>2</sup></i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Kids’N Play Building Blocks – Plastic Case UPC#8675014131006 141310 D1076-C6489 400194103622	Ross Stores, Inc.	Shen Hua International Ltd.

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinosa served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users, young children in this case, can be exposed to DEHP by dermal absorption through direct skin contact with the plastic during routine use when the case is handled with bare hands. Concentrations of DEHP can be expected to build within the zippered interior of the case. This DEHP can absorb to the surface of the interior contents, including but not limited to building blocks, that are subsequently handled, held in direct contact with skin, or mouthed by the user. If the Kids ‘N Play Building Blocks is stored or transported in a carrier, DEHP that leaches from the item may contaminate other articles contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested by the user. Finally, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user’s hand to mouth.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least July 7, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day

<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Espinosa’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinosa is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinosa has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On August 19, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO Shen Hua International Ltd. 16/F Rykadan Capital Tower 135 Hoi Bun Road, Kwun Tong Kowloon, Hong Kong China	President/CEO Ross Stores, Inc. c/o The Corporation Trust Company Corporation trust Center 1209 Orange Street Wilmington, DE 19801
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On August 19, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on August 19, 2019 in Bala Cynwyd, Pennsylvania.



\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Gabriel Espinosa.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 19, 2019



Evan J. Smith  
Attorney for Gabriel Espinosa



# EXHIBIT “B”

LAW OFFICES  
**BRODSKY & SMITH, LLC**

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CALIFORNIA OFFICE  
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877.534.2590

November 25, 2019

esmith@brodskysmith.com

President/CEO Ross Stores, Inc. The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	
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AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
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To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), 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.

With respect to the product identified below, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinoza sixty (60) days after effective service of this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

Ross Stores, Inc.

**Product Category/Type:** The type of product causing this violation is:

<b><i>Product<sup>2</sup></i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Lavendar Lane 4 Pc. Sheet Set 400189827045 D1901 C7236 RN# 157170	Ross Stores, Inc.	Unknown

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinoza served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Initial exposure would result from directly touching or holding the item during normal use. For example, the user would be expected to touch the clear plastic multiple times in the process of removing and returning items to the re-usable bag. Exposure would also occur from transporting the latter. Ingestion would occur from hand-to-mouth contact, for example, from eating after having handled the item

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least July 7, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

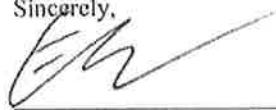
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<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product." Further, it is Espinoza's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:


I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On November 25, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO Ross Stores, Inc. The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	
---	--

On November 25, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §2529.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on November 25, 2019, in Bala Cynwyd, Pennsylvania.

  
\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Gabriel Espinoza.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 25, 2019



Evan J. Smith  
Attorney for Gabriel Espinoza

# EXHIBIT “C”

LAW OFFICES

**BRODSKY & SMITH, LLC**

TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004

610.667.6200  
FAX 610.667.9029  
www.brodskysmith.com

NEW JERSEY OFFICE  
1040 Kings Highway North, Suite 650  
CHERRY HILL, NJ 08034  
856.795.7250

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

CALIFORNIA OFFICE  
9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212  
877.534.2590

January 31, 2020

esmith@brodskysmith.com

President/CEO Ross Stores, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO HIA Brands, LLC c/o Gregg Haft 1410 Broadway, Rm 3203 New York, NY, 10018-9315
President/CEO The Sun Products Corporation c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), 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.

With respect to the product identified below, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinoza sixty (60) days after effective service of



this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

Ross Stores, Inc.  
HIA Brands, LLC  
The Sun Products Corporation

**Product Category/Type:** The type of product causing this violation is:

<b><i>Product<sup>2</sup></i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Easy Living 3 Piece Twin Double Brush Sheet Set - Case UPC# 813855027197 RN# 145321 940 D1615 C4610	Ross Stores, Inc.	HIA Brands, LLC The Sun Products Corporation

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinoza served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur through direct skin contact when the clear plastic is contacted with bare hands. Concentrations of DEHP can be expected to build within the interior of the case. Articles placed in the case, including but not limited to the manufacturer's twin sheet set, can absorb DEHP. A DEHP contaminated sheet and pillowcase can contact the user's body and face resulting in dermal exposure to DEHP. Finally, while mouthing of the item 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.

<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product." Further, it is Espinoza's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

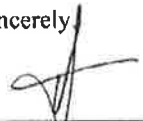
**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least December 18, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinoza's is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,

  
A handwritten signature in black ink, appearing to read "Evan J. Smith", is written over a horizontal line.

Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:


I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On January 31, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO Ross Stores, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO HIA Brands, LLC c/o Gregg Haft 1410 Broadway, Rm 3203 New York, NY, 10018-9315
President/CEO The Sun Products Corporation c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	

On January 31, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on January 31, 2020, in Bala Cynwyd, Pennsylvania.


  
\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Gabriel Espinoza.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 31, 2020

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Gabriel Espinoza

# EXHIBIT “D”

LAW OFFICES  
**BRODSKY & SMITH, LLC**

TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004

610.667.6200  
FAX 610.667.9029  
www.brodskysmith.com

NEW JERSEY OFFICE  
1040 Kings Highway North, Suite 650  
CHERRY HILL, NJ 08034  
856.795.7250

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

CALIFORNIA OFFICE  
9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212  
877.534.2590

February 4, 2020

esmith@brodskysmith.com

Member/Manager Hardy Way, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	President/CEO Ross Stores, Inc. The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
---	---

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC (“Brodsky Smith”) represents Gabriel Espinoza (“Espinoza”), 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.

With respect to the product identified below, Espinoza has identified a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that “[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 providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinoza sixty (60) days after effective service of this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

**Alleged Violator(s):** The name of the company's covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

Hardy Way, LLC  
Ross Stores, Inc.

**Product Category/Type:** The specific type of product causing this violation is:

<b><i>Product<sup>2</sup></i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Ed Hardy Men's Skin Essentials – Faux Leather D1988 C7114 400198782922 Batch: AER361297 MFG: 20190927	Ross Stores, Inc.	Hardy Way, LLC

**Listed Chemicals:** This violation involves exposure to the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed Diisononyl phthalate (DINP) as a chemical known to cause cancer. This addition took place more than twelve (12) months before Espinoza served this notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Diisononyl phthalate (DINP) without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause cancer.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users can be exposed to DINP by dermal absorption through direct skin contact with the faux leather lining during routine use when the bag is contacted with bare hands during skin care. If the product is stored or transported in a carrier, DINP that leaches from the item may contaminate other articles contained within these closed spaces that are subsequently handled, worn, mouthed, or ingested by the user. 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.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least December 18, 2020; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product." Further, it is Espinoza's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary



**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:


I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On February 4, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

Member/Manager Hardy Way, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	President/CEO Ross Stores, Inc. The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
---	---

On February 4, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on February 4, 2020, in Bala Cynwyd, Pennsylvania.

  
\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Gabriel Espinoza.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 4, 2020

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Gabriel Espinoza