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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 19 2020

CLERK OF THE SUPERIOR COURT  
By *J. Thomas*  
JANIE THOMAS, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 ACE HARDWARE CORPORATION,

Defendant.

Case No.: RG20082106

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 following  
16 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 at  
20 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 di(2-ethylhexyl) phthalate (DEHP), diisononyl phthalate (DINP),  
27 and/or carbon monoxide, toxic chemicals found in firelighters/chairs/containers sold and/or  
28

1 distributed by defendant Ace Hardware Corporation (“Ace Hardware” or the “Defendant”) in  
2 California.

3 3. DEHP and carbon monoxide are harmful chemicals known to the State of  
4 California to reproductive toxicity, and DEHP and DINP are harmful chemicals known to the State  
5 of California to cause cancer. On January 1, 1988 (DEHP) and on December 20, 2013 (DINP), the  
6 State of California listed DEHP and DINP as chemicals known to the State to cause cancer and  
7 each chemical has come under the purview of Proposition 65 regulations since that time. Cal. Code  
8 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On July 1, 1989  
9 (carbon monoxide) and on October 24, 2003 (DEHP), the State of California listed carbon  
10 monoxide and DEHP as chemicals known to cause reproductive toxicity.

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

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
17 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
18 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
19 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
20 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
21 25249.7.

22 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
23 without a requisite exposure warning, firelighters/chains/containers (the “Products”) that expose  
24 persons to DEHP, DINP and/or carbon monoxide.

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

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

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
4 Defendant to provide purchasers or users of the Products with required warnings related to the  
5 dangers and health hazards associated with exposure to DEHP/DINP/carbon monoxide pursuant  
6 to Health and Safety Code § 25249.7(a).

7 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

8 **PARTIES**

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

13 12. Defendant Ace Hardware, through its business, effectively imports, distributes,  
14 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
15 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

16 13. Plaintiff alleges that defendant Ace Hardware is a “person” in the course of doing  
17 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

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

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

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

7 **STATUTORY BACKGROUND**

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

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

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

17 19. An exposure to a chemical in a consumer product is one “which results from a  
18 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
19 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
20 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
21 shall provide a warning to any person to whom the product is sold or transferred unless the product  
22 is packaged or labeled with a clear and reasonable warning.”

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

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

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

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

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

11         21.        Proposition 65 provides that any “person who violates or threatens to violate” the  
12         statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
13         “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
14         probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
15         penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
16         365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

17   **FACTUAL BACKGROUND**

18         22.        On January 1, 1988 (DEHP) and on December 20, 2013 (DINP), the State of  
19         California listed DEHP and DINP as chemicals known to the State to cause cancer and each  
20         chemical has come under the purview of Proposition 65 regulations since that time. Cal. Code  
21         Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On July 1, 1989  
22         (carbon monoxide) and on October 24, 2003 (DEHP), the State of California listed carbon  
23         monoxide and DEHP as chemicals known to cause reproductive toxicity.

24         23.        The consumer exposures that are the subject of this Complaint result primarily from  
25         dermal absorption or inhalation of the Products. Items placed inside the Products can absorb  
26         DEHP/DINP that can be subsequently handled, held in direct contact with skin, mouthed, or  
27         ingested by the user. DEHP/DINP from the Products can absorb to clothes, bedding and assorted  
28         other items placed inside the Products and these items will become a source of DEHP/DINP dermal

1 exposure when worn, handled, or used. If the Products are stored or transported in a carrier,  
2 DEHP/DINP that leaches from the Products may contaminate other articles contained within these  
3 closed spaces are subsequently handled, worn, mouthed, or consumed. Finally, while direct  
4 mouthing of the Products does not seem likely, some amount of exposure through ingestion can  
5 occur by touching of the user's hand to mouth. Inhalation exposures occur when persons using  
6 these Products, or persons nearby when the Products are being used, inhale that which is emitted  
7 during its use. These Products cause carbon monoxide exposures to occur in people's yards and  
8 everywhere else throughout California where these Products are used. These violations occur  
9 during the foreseeable use of the Products and when the Products is used as intended. These  
10 violations are alleged for consumer and environmental exposures.

11 24. Defendant has marketed, distributed, offered to sell and/or sold the Products in  
12 California since at least November of 2019. The Products continue to be distributed and sold in  
13 California without the requisite warning information.

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

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

23 **SATISFACTION OF NOTICE REQUIREMENTS**

24 ***The Alleged Violations of Health and Safety Code § 25249.6 to Ace Hardware***

25 27. On November 19, 2019, Plaintiff gave notice of alleged violation of Health and  
26 Safety Code § 25249.6 (a "Notice of Violation") to Defendant concerning the exposure of  
27 California citizens to carbon monoxide contained in the Reddy Heat Premium Firelighters, UPC #  
28 761644893204 without proper warning, subject to a private action to Defendant and to the

1 California Attorney General's office and the offices of the County District attorneys and City  
2 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
3 violations allegedly occurred. See attached at Exhibit "A" a true and correct copy of the November  
4 19, 2019 Notice of Violation.

5 28. On February 26, 2020, Plaintiff gave notice of alleged violation of Health and  
6 Safety Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP  
7 contained in the Seachoice Vinyl Coated Anchor Lead Chain, UPC# 719249444017, 44401, Item#  
8 8092835, Ace Hardware Order#13153198 without proper warning, subject to a private action to  
9 Defendant and to the California Attorney General's office and the offices of the County District  
10 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein  
11 the herein violations allegedly occurred. See attached at Exhibit "B" a true and correct copy of the  
12 February 26, 2020 Notice of Violation.

13 29. On March 13, 2020, Plaintiff gave notice of alleged violation of Health and Safety  
14 Code § 25249.6 to Defendant concerning the exposure of California citizens to DINP contained in  
15 the Viewtainer Candy Container – Black Vinyl Cap, UPC#787660388067 without proper warning,  
16 subject to a private action to Defendant and to the California Attorney General's office and the  
17 offices of the County District attorneys and City Attorneys for each city with a population greater  
18 than 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibit "C"  
19 a true and correct copy of the March 13, 2020 Notice of Violation.

20 30. The Notices of Violation described herein are collectively referred to as, the  
21 "Notices."

22 31. The Notices complied with all procedural requirements of Proposition 65 including  
23 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
24 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
25 DEHP/DINP/carbon monoxide exposure, and that counsel believed there was meritorious and  
26 reasonable cause for a private action.

27 32. After receiving the Notices, and to Plaintiff's best information and belief, none of  
28 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a

1 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
2 the subject of the Notices.

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

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

13 **FIRST CAUSE OF ACTION**

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

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

17 36. Defendant has, at all times mentioned herein, acted as distributor and/or retailer of  
18 the Product.

19 37. The Products contain DEHP/DINP/carbon monoxide, hazardous chemicals found  
20 on the Proposition 65 list of chemicals known to be hazardous to human health.

21 38. The Products do not comply with the Proposition 65 warning requirements.

22 39. Plaintiff, based on his best information and belief, avers that at all relevant times  
23 herein, and at least since November 19, 2019, continuing until the present, that Defendant has  
24 continued to knowingly and intentionally expose California users and consumers of the Product to  
25 DEHP/DINP/carbon monoxide without providing required warnings under Proposition 65.

26 40. The exposures that are the subject of the November 19, 2020 Notice result from the  
27 combustion and inhalation of the Products. The Products are used primarily for cooking, in order  
28 to promote fast and easy charcoal ignition. Combustion of charcoal produces and exposes people



1 to carbon monoxide. Because the combustion of charcoal causes carbon monoxide to be released  
2 in the air, people using charcoal-burning grills, and others standing near the Products when  
3 charcoal is burning in or on the Products, inhale carbon monoxide. Consequently, a primary route  
4 of exposure to the chemicals contained in these Products is through inhalation. Inhalation  
5 exposures occur when persons using these Products, or persons nearby when the Products are being  
6 used, inhale that which is emitted during its use. These Products cause carbon monoxide exposures  
7 to occur in people's yards and everywhere else throughout California where these Products are  
8 used. These violations occur during the foreseeable use of the Products and when the Products is  
9 used as intended. These violations are alleged for consumer and environmental exposures.

10 41. The exposures that are the subject of the February 26, 2020 Notice and March 13,  
11 2020 Notice result from the purchase, acquisition, handling and recommended use of the Products.  
12 Consequently, the primary route of exposure to these chemicals is through dermal absorption. are  
13 faster than neat DEHP/DINP permeation. Items placed inside the Products can absorb  
14 DEHP/DINP that can be subsequently handled, held in direct contact with skin, mouthed, or  
15 ingested by the user. DEHP/DINP from the Products can absorb to clothes, bedding and assorted  
16 other items placed inside the Products and these items will become a source of DEHP/DINP dermal  
17 exposure when worn, handled, or used. If the Products are stored or transported in a carrier,  
18 DEHP/DINP that leaches from the Products may contaminate other articles contained within these  
19 closed spaces are subsequently handled, worn, mouthed, or consumed. Finally, while direct  
20 mouthing of the Products does not seem likely, some amount of exposure through ingestion can  
21 occur by touching of the user's hand to mouth.

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

25 43. Defendant has knowledge that the normal and reasonably foreseeable use of the  
26 Products will expose individuals to DEHP/DINP/carbon monoxide, and Defendant intends that  
27 exposures to DEHP/DINP/carbon monoxide will occur by its deliberate, non-accidental  
28

1 participation in the importation, distribution, sale and offering of the Products to consumers in  
2 California

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

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

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

9 **PRAYER FOR RELIEF**

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

12 A. That the court assess civil penalties against each Defendant in the amount of \$2,500  
13 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
14 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

15 B. That the court preliminarily and permanently enjoin Defendant mandating  
16 Proposition 65 compliant warnings on the Product;

17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
18 amount of \$50,000.00.

19 D. That the court grant any further relief as may be just and proper.

20 Dated: November 19, 2020

BRODSKY & SMITH, LLC

21 By: \_\_\_\_\_

Evan J. Smith (SBN242352)  
22 Ryan P. Cardona (SBN302113)  
23 9595 Wilshire Boulevard, Suite 900  
24 Beverly Hills, CA 90212  
25 Telephone: (877) 534-2590  
26 Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

# EXHIBIT "A"

LAW OFFICES  
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November 19, 2019

esmith@brodskysmith.com

President/CEO SHM International Corporation c/o Michael R. Mulberry 695 North River Forest Court Marietta, GA 30068	President/CEO SHM International Corporation 3140 Moon Station Road Kennessaw, GA 30144
President/CEO Ace Hardware Corporation c/o Corporation Service Company Which Will Do Business In California As CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Ace Hardware 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 Anthony Ferreiro (“Ferreiro”), 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, Ferreiro 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 Ferreiro 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 company covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

SHM International Corporation  
Ace Hardware Corporation

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

<i>Product<sup>2</sup></i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Reddy Heat Premium Firelighters UPC# 761644893204	Ace Hardware Corporation	SHM International Corporation

**Listed Chemicals:** These products sold to California residents by Violators are the subject of this Notice and Violators failed to clearly and reasonably warn consumers that carbon monoxide is a chemical known to the State of California to cause reproductive toxicity. On July 1, 1989 the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency added carbon monoxide to the Proposition 65 list.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to carbon monoxide without providing clear and reasonable warning of this exposure. In particular, the products do not warn that they contain chemicals known to the State of California to cause reproductive toxicity.

**Route of Exposure:** The exposures that are the subject of this notice result from the combustion and inhalation of the products. The products are used primarily for cooking, in order to promote fast and easy charcoal ignition. Combustion of charcoal produces and exposes people to carbon monoxide. Because the combustion of charcoal causes carbon monoxide to be released in the air, people using charcoal-burning grills, and others standing near the products when charcoal is burning in or on the products, inhale carbon monoxide. Consequently, a primary route of exposure to the chemicals contained in these products is through inhalation. Inhalation exposure occur when persons using these products, or persons nearby when the products are being used, inhale that which is emitted during its use. These products cause carbon monoxide exposures to occur in people’s yards and everywhere else throughout California where these products are used. These violations occur during the foreseeable use of the products and when the product is used as intended. These violations are alleged for consumer and environmental exposures.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least October 23, 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

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<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 Ferreiro’s position that the alleged Violators are 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.

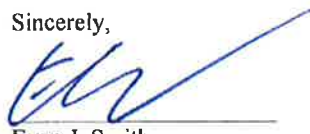
until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the products.

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, Ferreiro is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Ferreiro 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 November 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 SHM International Corporation c/o Michael R. Mulberry 695 North River Forest Court Marietta, GA 30068	President/CEO SHM International Corporation 3140 Moon Station Road Kennessaw, GA 30144
President/CEO Ace Hardware Corporation c/o Corporation Service Company Which Will Do Business In California As CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Ace Hardware Corporation c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808

On November 19, 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 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, Anthony Ferreiro.
- (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 19, 2019

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Anthony Ferreiro



# EXHIBIT “B”

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 26, 2020

esmith@brodskysmith.com

President/CEO Land 'N' Sea Distributing, Inc. c/o CT Corporation System 1200 South Pine Island Road Plantation, FL 33324	President/CEO Ace Hardware Corporation c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
President/CEO Ace Hardware Corporation c/o Corporation Service Company Which Will Do Business In California As CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	

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 Anthony Ferreiro (“Ferreiro”), 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, Ferreiro 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 Ferreiro 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:

Land ‘N’ Sea Distributing, Inc.  
Ace Hardware 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>
Seachoice Vinyl Coated Anchor Lead Chain UPC# 719249444017 44401 Item# 8092835 Ace Hardware Order#13153198	Ace Hardware Corporation	Land ‘N’ Sea Distributing, Inc.

**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 Ferreiro 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 can be exposed to DEHP by dermal absorption through direct skin contact with the white vinyl coating during routine use when the chain is handled with bare hands. If the chain 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, 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.

<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 Ferreiro’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 2, 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, Ferreiro is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Ferreiro 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 26, 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 Land 'N' Sea Distributing, Inc. c/o CT Corporation System 1200 South Pine Island Road Plantation, FL 33324	President/CEO Ace Hardware Corporation c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
President/CEO Ace Hardware Corporation c/o Corporation Service Company Which Will Do Business In California As CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Ulta Beauty, Inc. 1000 Reminton Blvd., Suite 120 Bolingbrook, IL 60440

On February 26, 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 26, 2020, in Bala Cynwyd, Pennsylvania.

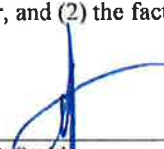
  
\_\_\_\_\_  
Evan J. Smith

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

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- (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 Anthony Ferreiro.
- (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 26, 2020

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Anthony Ferreiro

# EXHIBIT “C”

LAW OFFICES

**BRODSKY & SMITH, LLC**

TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004

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856.795.7250

NEW YORK OFFICE  
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MINEOLA, NY 11501  
516.741.4977

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

March 13, 2020

esmith@brodskysmith.com

President/CEO ARQ Enterprises, Inc. c/o Peter C. Giffin 10636 Scripps Summit Ct. San Diego, CA 92131	President/CEO ARQ Enterprises, Inc. t/a Viewtainer c/o Peter C. Giffin 10636 Scripps Summit Ct. San Diego, CA 92131
Calvige C. Perry t/a Viewtainer 1884 Winrow Road El Cajon, CA 92021	President/CEO Ace Hardware Corporation c/o Corporation Service Company 251 Little falls Drive Wilmington, DE 19808
President/CEO Ace Hardware Corporation c/o Corporation Service Company Which Will Do Business In California As CSC – Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	

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 Anthony Ferreiro (“Ferreiro”), 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 Ferreiro 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 Ferreiro 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 company's covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

ARQ Enterprises, Inc.  
ARQ Enterprises, Inc. t/a Viewtainer  
Calvidge C. Perry  
Ace Hardware Corporation

**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>
Viewtainer Candy Container – Black Vinyl Cap UPC#787660388067	Ace Hardware Corporation	ARQ Enterprises, Inc, ARQ Enterprises, Inc. t/a Viewtainer Calvidge C. Perry

**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 Ferreiro 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 black vinyl during routine use when handled with bare hands. Concentrations of DINP can be expected to build within the interior of the container. This DINP can absorb to the surface of the contents that are subsequently handled, mouthed, or ingested by the user. If the container 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 consumed.

<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 Ferreiro'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.

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 February 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.

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

Ferreiro 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:

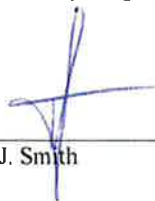
I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On March 13, 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:

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Executed on March 13, 2020, in Bala Cynwyd, Pennsylvania.

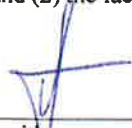
  
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Evan J. Smith

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Health & Safety Code Section 25249.7(d)

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Dated: March 13, 2020

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Anthony Ferreiro