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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**06/28/2022**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 WATER SPORTS, LLC,

15 Defendant.

Case No.:

**CGC-22-600424**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

16 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following  
17 cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People’s right to be informed of the health  
27 hazards caused by exposure to di-isodecyl phthalate (DIDP), a toxic chemical found in both (a)  
28 Swim-through rings, and (b) Lighted Bocce sets, each sold and/or distributed by defendant Water  
Sports, LLC. (“Water Sports” or “Defendant”) in California.

1           3.       DIDP is a harmful chemical known to the State of California to cause reproductive  
2 toxicity. On April 20, 2007, the State of California listed DIDP as a chemical known to the State  
3 to cause reproductive toxicity and it has come under the purview of Proposition 65 regulations  
4 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
5 25249.10(b).

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

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

18           6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
19 without a requisite exposure warning, both (a) Swim-through rings, and (b) Lighted Bocce sets,  
20 (the “Products”) that expose persons to DIDP when used for their intended purpose.

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

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

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

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

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

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

9 12. Defendant Water Sports, through its business, effectively imports, distributes, sells,  
10 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
11 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

12 13. Plaintiff alleges that defendant Water Sports is a "person" in the course of doing  
13 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 14. Venue is proper in the County of San Francisco because one or more of the  
16 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
17 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
18 respect to the Products.

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

24 16. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
25 the State of California, has sufficient minimum contacts with the State of California, is registered  
26 with the California Secretary of State as foreign corporations authorized to do business in the State  
27 of California, and/or has otherwise purposefully availed itself of the California market. Such  
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
2 permissible with traditional notions of fair play and substantial justice.

3 **STATUTORY BACKGROUND**

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

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

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

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

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

- 21 a. A warning that appears on a product’s label or other labeling.
- 22 b. Identification of the product at the retail outlet in a manner which provides  
23 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
24 thereof.

25  
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 April 20, 2007, the State of California listed DIDP as a chemical known to the  
16 State to cause reproductive toxicity and it has come under the purview of Proposition 65  
17 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8  
18 & 25249.10(b).

19 23. The exposures that are the subject of this Complaint result from the purchase,  
20 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
21 exposure to DIDP is through dermal absorption. Dermal absorption of DIDP will occur through  
22 direct skin contact when the Products are contacted with bare hands or exposed skin. Exposure  
23 through ingestion will occur by touching the Products with subsequent touching of the user's hand  
24 to mouth. No clear and reasonable warning is provided with the Products regarding the health  
25 hazards of exposure to the DIDP.

26 24. Defendant has manufactured, processed, marketed, distributed, offered to sell  
27 and/or sold the Products in California since at least June 29, 2021, Swim-through rings, and June  
28

1 30, 2021, Lighted Bocce sets. The Products continue to be distributed and sold in California  
2 without the requisite warning information.

3 25. At all times relevant to this action, Defendant has knowingly and intentionally  
4 exposed users and/or consumers of the Products to DIDP without first giving a clear and reasonable  
5 exposure warning to such individuals.

6 26. As a proximate result of acts by Defendant, as a person in the course of doing  
7 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
8 California, including in San Francisco County, have been exposed to DIDP without a clear and  
9 reasonable warning on the Products. The individuals subject to the violative exposures include  
10 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
11 the Products.

12 **SATISFACTION OF NOTICE REQUIREMENTS**

13 27. On June 4, 2021, Plaintiff purchased the Products from Water Sports. At the time  
14 of purchase, Water Sports did not provide a Proposition 65 exposure warning for DIDP or any  
15 other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described  
16 *supra*.

17 28. On June 25, 2022, The Products were sent to a testing laboratory for phthalate  
18 testing to determine the phthalate content of the Products.

19 29. On June 28, 2021, the laboratory provided the results of its analysis. Results of this  
20 test determined the Products expose users to DIDP (the “Chemical Test Report”).

21 30. On June 28, 2021, Plaintiff provided the Chemical Test Report and Products to an  
22 analytical chemist to determine if, based on the findings of the Chemical Test Report and the  
23 reasonable and foreseeable use of the Products, exposure to DIDP will occur at levels that require  
24 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of  
25 the California Code of Regulations.

26 31. On June 29, 2021 Plaintiff received from the analytical chemist an exposure  
27 assessment report which concluded that persons in California who use the Products will be exposed  
28 to levels of DIDP that require a Proposition 65 exposure warning.



1 sets), continuing until the present, that Defendant has continued to knowingly and intentionally  
2 expose California users and consumers of the Products to DIDP without providing required  
3 warnings under Proposition 65.

4 41. The exposures that are the subject of the Notice result from the purchase,  
5 acquisition, handling and recommended use of the Products. The primary route of exposure to  
6 DIDP is through dermal. Dermal absorption of DIDP will occur through direct skin contact when  
7 the Products are contacted with bare hands or exposed skin. Exposure through ingestion will occur  
8 by touching the Products with subsequent touching of the user's hand to mouth. No clear and  
9 reasonable warning is provided with the Products regarding the health hazards of exposure to the  
10 DIDP.

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

14 43. Defendant has knowledge that the normal and reasonably foreseeable use of the  
15 Products exposes individuals to DIDP, and Defendant intends that exposures to DIDP will occur  
16 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of  
17 the Products to consumers in California

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

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

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



1 **PRAYER FOR RELIEF**

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

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

7 B. That the court preliminarily and permanently enjoin Defendant mandating  
8 Proposition 65 compliant warnings on the Products;

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

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

12 Dated: June 28, 2022

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