

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

8 *Attorneys for Plaintiff*

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

11/14/2022  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-22-602902

DONATUS MCCOY,

Plaintiff,

vs.

WEST MARINE PRODUCTS, INC.,

Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

Plaintiff Donatus McCoy (“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 diisononyl phthalate (DINP) (collectively the “Listed Chemicals”), toxic chemicals found in products sold and/or distributed by defendant West Marine Products, Inc. (“West Marine” or “Defendant”) in California.

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

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

11           5.       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 that will create an exposure above safe harbor levels with a “clear and  
15 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
16 chemical.

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

22           7.       Plaintiff alleges that Defendant distributes, sells and/or offers for sale in California,  
23 without a requisite exposure warning, (a) Weems & Plath Protractor Triangle – cases/bags, (b)  
24 Chartube dry cases, and (c) West Marine Anchor Rode Bags (collectively, the “Products”) that  
25 expose persons to Proposition 65 Listed Chemicals when used for their intended purpose.

26           8.       Defendant’s failure to warn consumers and other individuals in California of the  
27 health hazards associated with exposure to Listed Chemicals in conjunction with the sale and/or  
28

1 distribution of the Products is a violation of Proposition 65 and subjects Defendant to the  
2 enjoinder and civil penalties described herein.

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

5 10. Plaintiff also seeks injunctive relief, preliminarily and permanently requiring  
6 Defendant to provide purchasers or users of the Products with required warnings related to the  
7 dangers and health hazards associated with exposure to the Listed Chemicals, pursuant to Health  
8 and Safety Code § 25249.7(a).

9 11. Plaintiff further seeks a reasonable award of attorney's fees and costs.

### 10 **PARTIES**

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

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

### 20 **VENUE AND JURISDICTION**

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

25 15. This Court has jurisdiction over this action pursuant to California Constitution  
26 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
27 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
28

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
2 jurisdiction over this lawsuit.

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

9 **STATUTORY BACKGROUND**

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

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

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

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

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

3 a. A warning that appears on a product's label or other labeling.

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

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

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

14 21. Proposition 65 provides that any "person who violates or threatens to violate" the  
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
16 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
17 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
19 365 days.

20 **FACTUAL BACKGROUND**

21 22. DEHP is a harmful chemical known to the State of California to cause cancer and  
22 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known  
23 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
24 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

---

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 On October 24, 2003, the State of California listed DEHP as a chemical known to cause  
2 reproductive toxicity.

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

7 24. The exposures that are the subject of the Notice result from the purchase,  
8 acquisition, handling, and recommended use of the Products.

9 25. The primary route of exposure to the Listed Chemicals is through dermal  
10 absorption. Dermal absorption can occur through direct skin contact when the Products are  
11 contacted with bare hands or exposed skin. Exposure through ingestion will occur by touching the  
12 Products with subsequent touching of the user's hand to mouth.

13 26. Defendant has marketed, distributed, offered to sell and/or sold the Products in  
14 California since at least November 11, 2021. The Products continue to be distributed and sold in  
15 California without the requisite warning information.

16 27. At all times relevant to this action, Defendant has knowingly and intentionally  
17 exposed users of the Products to Listed Chemicals without first giving a clear and reasonable  
18 exposure warning to such individuals.

19 28. As a proximate result of acts by Defendant, as a person in the course of doing  
20 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
21 California, including in San Francisco County, have been exposed to Proposition 65 listed  
22 chemicals without a clear and reasonable warning on the Products. The individuals subject to the  
23 violative exposures include normal and foreseeable users and consumers that use the Products, as  
24 well as all others exposed to the Products.

**SATISFACTION OF NOTICE REQUIREMENTS**

***The Alleged Violations of Health and Safety Code § 25249.6 to West Marine***

29. Plaintiff purchased the Products from West Marine. At the time of the purchases, West Marine did not provide a Proposition 65 exposure warning for Listed Chemicals in a manner consistent with H&S Code § 25603.1 as described *supra*.

30. The Products were sent to a testing laboratory to determine the phthalate content of the Product.

31. On November 1, 2021, the laboratory confirmed the results of these analyses determined the Products expose users to phthalates (each, a “Chemical Test Report,” collectively, the “Chemical Test Reports”).

32. Plaintiff provided the Chemical Test Reports and each Product to an analytical chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable and foreseeable use of the Products, exposure to the Listed Chemicals will occur at levels that require Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California Code of Regulations.

33. On November 11, 2021, Plaintiff received from the analytical chemist an exposure assessment report for each Product which concluded that persons in California who use the Products will be exposed to levels of Listed Chemicals that require a Proposition 65 exposure warning.

34. On November 11, 2021 (Weems & Plath Protractor Triangle – case/bag) (Exhibit A), November 17, 2021 (Chartube dry case) (Exhibit B), November 19, 2022 (West Marine Anchor Rode Bag) (Exhibit C), Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (collectively, the “Notices”) to Defendant concerning the exposure of California citizens to Listed Chemicals from use of the Products without proper warning, subject to a private action to Defendant and to the California Attorney General’s office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibits “A” – “C” a true and correct copy of the each Notice.

1 35. The Notices complied with all procedural requirements of Proposition 65 including  
2 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
3 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
4 Listed Chemicals exposure, and that counsel believed there was meritorious and reasonable cause  
5 for a private action.

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

10 37. Plaintiff is commencing this action more than sixty (60) days from the date of each  
11 Notice to Defendant, as required by law.

12 **FIRST CAUSE OF ACTION**

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

14 38. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 37 of  
15 this Complaint as though fully set forth herein.

16 39. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of  
17 the Products.

18 40. Use of the Products will expose users and consumers thereof to Listed Chemicals,  
19 hazardous chemicals found on the Proposition 65 list of chemicals known to be hazardous to  
20 human health.

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

22 42. Plaintiff, based on his best information and belief, avers that at all relevant times  
23 herein, and at least November 11, 2021, continuing until the present, that Defendant has continued  
24 to knowingly and intentionally expose California users and consumers of the Products to Listed  
25 Chemicals without providing required warnings under Proposition 65.

26 43. The exposures that are the subject of the Notices result from the purchase,  
27 acquisition, handling and recommended use of the Products. The primary route of exposure to  
28 these chemicals is through dermal absorption. Dermal absorption of the Listed Chemicals can



1 occur through direct skin contact when the Products are contacted with bare hands or exposed skin.  
2 Exposure through ingestion will occur by touching the Products with subsequent touching of the  
3 user's hand to mouth, or direct contact with the user's mouth.

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

7 45. Defendant has knowledge that the normal and reasonably foreseeable use of the  
8 Products exposes individuals to Listed Chemicals, and Defendant intends that exposures to Listed  
9 Chemicals will occur by its deliberate, non-accidental participation in the importation, distribution,  
10 sale and offering of the Products to consumers in California

11 46. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
12 Complaint.

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

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

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 defendant in the amount of \$2,500 per  
5 day for each violation for up to 365 days in accordance with Health and Safety Code §  
6 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: November 11, 2022

BRODSKY & SMITH

13 By: 

14 Evan J. Smith (SBN242352)  
15 Ryan P. Cardona (SBN302113)  
16 9595 Wilshire Boulevard, Suite 900  
17 Beverly Hills, CA 90212  
18 Telephone: (877) 534-2590  
19 Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

# EXHIBIT "A"

LAW OFFICES  
**BRODSKY & SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

November 11, 2021

Member/Manager Weems & Plath, LLC c/o CSC-Lawyers Incorporating Service Company 7 St. Paul Street, Suite 820 Baltimore, MD 21202	President/CEO Weems & Plath, Inc. 214 Eastern Ave. Annapolis, MD 21403
President/CEO/Owner C. Plath/North American Div. 214 Eastern Ave. Annapolis, MD 21403-3372	President/CEO West Marine Products, Inc. c/o CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324
President/CEO West Marine Products – Florida, Inc. c/o CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Donatus McCoy ("McCoy"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, McCoy has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or

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

how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Donatus McCoy; 910 N. Tajauta, Compton, CA 90220; 424-302-3405.
2. **Alleged Violator(s):** Weems & Plath, LLC; Weems & Plath, Inc.; C. Plath/North American Div.; West Marine Products, Inc.; West Marine Products – Florida, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least September 29, 2021 and are continuing to this day.
4. **Listed Chemical:** Di(2-ethylhexyl) phthalate (DEHP). DEHP is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Weems & Plath protractor bag	Weems & Plath protractor bag UPC# 721002001016

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user’s hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

**II. PROPOSITION 65 INFORMATION**

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

**III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of McCoy against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have

---

<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is McCoy’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

these violations of California law quickly rectified, McCoy is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

McCoy has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com).

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

# EXHIBIT “B”

LAW OFFICES  
**BRODSKY & SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

November 17, 2021

Member/Manager Waterproof Charts, LLC c/o Shawn Bellestri 3100 Gordon Drive Naples, FL 34102	Member/Manager Waterproof Charts, LLC c/o Shawn Bellestri 1809 Rochester Industrial Ct. Rochester Hills, MI 48309
Member/Manager Landry Holdings, LLC c/o United States Corporation Agents, Inc. 5575 S. Semoran Blvd., Suite 36 Orlando, FL 32822	Member/Manager Landry Holdings, LLC aka Waterproof Charts, Inc. 4486 Stonebridge Road Destin, FL 32541
President/CEO West Marine Products, Inc. c/o CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324	President/CEO West Marine Products-Florida, Inc. c/o CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324
President/CEO West Marine Products-Florida, Inc. 500 Westbridge Drive Watsonville, CA 95076	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Donatus McCoy ("McCoy"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, McCoy has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in

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



California. Health & Safety Code § 25249.6 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 the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Donatus McCoy, 910 N. Tajauta, Compton, CA 90220; Phone (424)302-3405.
2. **Alleged Violator(s):** Waterproof Charts, LLC; Landry Holdings, LLC; Landry Holdings, LLC aka Waterproof Charts, Inc.; West Marine Products, Inc.; West Marine Products-Florida, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least September 29, 2021 and are continuing to this day.
4. **Listed Chemical:** Diisononyl phthalate (DINP). DINP is listed under Proposition 65 as a chemical known to the State to cause cancer.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Chartube waterproof case	Chartube waterproof case UPC# 740399932000

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user’s hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

**II. PROPOSITION 65 INFORMATION**

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

**III. RESOLUTION OF THE CLAIMS**

---

<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is McCoy’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of McCoy against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, McCoy is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

McCoy has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com).

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

# EXHIBIT “C”

LAW OFFICES  
**BRODSKY & SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

November 19, 2021

President/CEO West Marine Products, Inc. c/o CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324	President/CEO West Marine Products-Florida, Inc. c/o CT Corporation System 1200 S. Pine Island Road Plantation, FL 33324
President/CEO West Marine Products-Florida, Inc. 500 Westbridge Drive Watsonville, CA 95076	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Donatus McCoy ("McCoy"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, McCoy has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

- 1. Enforcer:** Donatus McCoy, 910 N. Tajauta, Compton, CA 90220; Phone (424)302-3405.
- 2. Alleged Violator(s):** West Marine Products, Inc.; West Marine Products-Florida, Inc.

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

3. **Time Period of Exposure:** Violations have been occurring since at least October 4, 2021 and are continuing to this day.
4. **Listed Chemical:** Diisononyl phthalate (DINP). DINP is listed under Proposition 65 as a chemical known to the State to cause cancer.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
West Marine mesh bag	West Marine mesh bag UPC# 025282070534

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

## **II. PROPOSITION 65 INFORMATION**

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

## **III. RESOLUTION OF THE CLAIMS**


Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of McCoy against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, McCoy is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

McCoy has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com).**

Sincerely,

---

<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is McCoy's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.



Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

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