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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/08/2023
Clerk of the Court
BY: MADELLE MACADANGDANG
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

9 DONATUS MCCOY,

10 Plaintiff,

11 vs.

12 WEST MARINE PRODUCTS, INC.,

13 Defendant.

Case No.: CGC-22-602902

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

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

14 Plaintiff Donatus McCoy (“Plaintiff”), by and through his attorneys, alleges the following
15 cause of action in the public interest of the citizens of the State of California.

16 **BACKGROUND OF THE CASE**

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

23 2. This first amended complaint is a representative action brought by Plaintiff in the
24 public interest of the citizens of the State of California to enforce the People’s right to be informed
25 of the health hazards caused by exposure to diisononyl phthalate (DINP), a toxic chemical found
26 in products sold and/or distributed by defendant West Marine Products, Inc. (“West Marine” or
27 “Defendant”) in California.
28

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

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

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

16 6. Plaintiff alleges that Defendant distributes, sells and/or offers for sale in California,
17 without a requisite exposure warning, (a) Chartube dry cases, and (b) West Marine Anchor Rode
18 bags (collectively, the “Products”) that expose persons to DINP when used for their intended
19 purpose.

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

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

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

1 dangers and health hazards associated with exposure to DINP, pursuant to Health and Safety 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 West Marine, 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 Plaintiff alleges that defendant West Marine is a "person" in the course of doing business within
13 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 13. 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 14. 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 15. 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 a foreign corporation authorized to do business in the
27 State 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 16. 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 17. 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 and birth defects or other reproductive harm. H&S Code § 25249.6 states, in
10 pertinent part:

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

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

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

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

26
27 ¹ 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 20. 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.

14 **FACTUAL BACKGROUND**

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

19 22. The exposures that are the subject of the Notices result from the purchase,
20 acquisition, handling, and recommended use of the Products. The primary route of exposure to
21 DINP is through dermal absorption directly through the skin when consumers use, touch, or handle
22 the Products. Exposure through ingestion will occur by touching the Products with subsequent
23 touching of the user's hand to mouth. No clear and reasonable warning is provided with the
24 Products regarding the health hazards of exposure.

25 23. Defendant has marketed, distributed, offered to sell and/or sold the Products in
26 California since at least November 17, 2021 with respect to the Chartube dry cases; and since at
27 least November 19, 2021 with respect to the West Marine Anchor Rode bags. The Products
28 continue to be distributed and sold in California without the requisite warning information.

1 39. Plaintiff, based on his best information and belief, avers that at all relevant times
2 herein, and since at least November 17, 2021 with respect to the Chartube dry cases; and since at
3 least November 19, 2021 with respect to the West Marine Anchor Rode bags, continuing until the
4 present, that Defendant has continued to knowingly and intentionally expose California users and
5 consumers of the Products to DINP without providing required warnings under Proposition 65.

6 40. The exposures that are the subject of the Notices result from the purchase,
7 acquisition, handling and recommended use of the Products. The primary route of exposure to
8 these chemicals is through dermal absorption directly through the skin when consumers use, touch,
9 or handle the Products. Exposure through ingestion will occur by touching the Products with
10 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
11 with the Products regarding the health hazards of exposure.

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

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

19 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
20 First Amended Complaint.

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

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

PRAYER FOR RELIEF

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

- A. That the court assess civil penalties against defendant in the amount of \$2,500 per day for each violation for up to 365 days in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant, mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: August 8, 2023

BRODSKY SMITH

By: _____



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

Attorneys for Plaintiff

EXHIBIT “A”

LAW OFFICES
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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 Act¹

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

¹ 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 ²	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

² 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.**

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
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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	

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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.

¹ 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 ²	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.

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Evan J. Smith

Attachments

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