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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/18/2023
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 EVOLUCION INNOVATIONS, INC.,
15 WHISTLER VILLAGE SPORTS LTD.,

16 Defendants.

Case No.:

CGC-23-608467

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
18 of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to bisphenol A (BPA) and/or di(2-ethylhexyl) phthalate (DEHP), toxic
chemicals found in products sold and/or distributed by defendants Evolucion Innovations, Inc.
 (“Evo”) and/or Whistler Village Sports Ltd. (collectively, “Defendants”) in California.

1 3. BPA¹ is a harmful chemical known to the State of California to cause birth defects
2 or other reproductive harm. DEHP² is a harmful chemical known to the State of California to cause
3 cancer and birth defects or other reproductive harm.

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

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

16 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
17 without a requisite exposure warning, (a) *Idol Surf*® wakesurf ropes, UPC # 852510008775,
18 (DEHP), (b) *POC*® Axion Spin MTB helmets, UPC # 7325541012231, (BPA), and (c) *LXS*® Trail
19 Evo helmets, UPC # 7630053197278, (BPA), (collectively, the “Products” and each a “Product”)
20 that expose persons to BPA and/or DEHP when used for their intended purpose.

21
22
23 ¹ On May 11, 2015, the State of California listed BPA as a chemical known to the State to cause
24 birth defects or other reproductive harm and BPA has come under the purview of Proposition 65
25 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8
& 25249.10(b).

26 ² . On January 1, 1988, the State of California listed DEHP as a chemical known to the State to
27 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.
28 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24,
2003, the State of California listed DEHP as a chemical known to cause birth defects or other
reproductive harm.

1 **VENUE AND JURISDICTION**

2 14. Venue is proper in the County of San Francisco because one or more of the
3 instances of wrongful conduct occurred, and continue to occur in this county and/or because
4 Defendants conducted, and continue to conduct, business in the County of San Francisco with
5 respect to the Products.

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

11 16. This Court has jurisdiction over Defendants because each defendant is either a
12 citizen of the State of California, has sufficient minimum contacts with the State of California, is
13 registered with the California Secretary of State as foreign corporations authorized to do business
14 in the State of California, and/or has otherwise purposefully availed itself of the California market.
15 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
16 and permissible with traditional notions of fair play and substantial justice.

17 **STATUTORY BACKGROUND**

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

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

25 No person in the course of doing business shall knowingly and intentionally expose any
26 individual to a chemical known to the state to cause cancer or reproductive toxicity without
27 first giving clear and reasonable warning to such individual...
28

1 19. An exposure to a chemical in a consumer product is one “which results from a
2 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
3 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
4 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
5 shall provide a warning to any person to whom the product is sold or transferred unless the product
6 is packaged or labeled with a clear and reasonable warning.”

7 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
8 more of the following methods individually or in combination:³

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

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

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

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

20 21. Proposition 65 provides that any “person who violates or threatens to violate” the
21 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
22 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
23 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
24
25

26
27 ³ 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 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
2 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

3 **FACTUAL BACKGROUND**

4 22. On May 11, 2015, the State of California listed BPA as a chemical known to the
5 State to cause birth defects or other reproductive harm and BPA has come under the purview of
6 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
7 Code §§ 25249.8 & 25249.10(b).

8 23. On January 1, 1988, the State of California listed DEHP as a chemical known to
9 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
10 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
11 On October 24, 2003, the State of California listed DEHP as a chemical known to cause birth
12 defects or other reproductive harm.

13 24. The exposures that are the subject of the Notices result from the purchase,
14 acquisition, handling, and recommended use of the Products. The primary route of exposure to
15 BPA and/or DEHP is through dermal absorption directly through the skin when consumers use,
16 touch, or handle the Products. Exposure through ingestion will occur by touching the Product with
17 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
18 with the Products regarding the health hazards of exposure.

19 25. Defendants have processed, marketed, distributed, offered to sell and/or sold the
20 Products in California since at least August 23, 2022 with respect to the *Idol Surf*® Product; and
21 since at least September 13, 2022 with respect to the *POC*® Product and the *LXS*® Product. The
22 Products continue to be distributed and sold in California without the requisite warning
23 information.

24 26. At all times relevant to this action, Defendants have knowingly and intentionally
25 exposed users and/or consumers of the Products to BPA and/or DEHP without first giving a clear
26 and reasonable exposure warning to such individuals.

27 27. As a proximate result of acts by Defendants, as a person in the course of doing
28 business within the meaning of H&S Code § 25249.11, individuals throughout the State of

1 California, including in San Francisco County, have been exposed to BPA and/or DEHP without
2 a clear and reasonable warning on the Products. The individuals subject to the violative exposures
3 include normal and foreseeable users and consumers that use the Products, as well as all others
4 exposed to the Products.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 28. Plaintiff purchased the Products from Evo. At the time of purchase, Defendants did
7 not provide a Proposition 65 exposure warning for BPA, DEHP, or any other Proposition 65 listed
8 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

9 29. The *Idol Surf*® Product was sent to a testing laboratory for phthalate testing to
10 determine the phthalate content of the Product; and the *POC*® Product and the *IXS*® Product were
11 sent to a testing laboratory for BPA testing to determine the measurable migration of BPA from
12 the surface of the Products.

13 30. For each Product that was sent to the laboratory, Plaintiff received a chemical test
14 report (collectively, the “Chemical Test Reports”). The Chemical Test Report findings determined
15 the *Idol Surf*® Product exposes users to DEHP; and the *POC*® Product and the *IXS*® Product
16 exposes users to BPA.

17 31. Plaintiff provided each Chemical Test Report and each Product to an analytical
18 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable
19 and foreseeable use of the Products, exposure to BPA and/or DEHP will occur at levels that require
20 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
21 the California Code of Regulations.

22 32. On August 23, 2022, Plaintiff received from the analytical chemist an exposure
23 assessment report for the *Idol Surf*® Product that concluded that persons in California who use the
24 *Idol Surf*® Product will be exposed to levels of DEHP that require a Proposition 65 exposure
25 warning. On September 13, 2022, Plaintiff received from the analytical chemist exposure
26 assessment reports for the *POC*® Product and the *IXS*® Product that concluded that persons in
27 California who use the *POC*® Product and the *IXS*® Product will be exposed to levels of BPA that
28 require a Proposition 65 exposure warning.

1 41. Plaintiff, based on her best information and belief, avers that at all relevant times
2 herein, and at least since at least August 23, 2022 with respect to the *Idol Surf*® wakesurf ropes;
3 and since at least September 13, 2022 with respect to the *POC*® Axion Spin MTB helmets and
4 *LXS*® Trail Evo helmets, continuing until the present, that Defendants have continued to knowingly
5 and intentionally expose California users and consumers of the Products to BPA and/or DEHP
6 without providing required warnings under Proposition 65.

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

13 43. Plaintiff, based on her best information and belief, avers that such exposures will
14 continue every day until clear and reasonable warnings are provided to purchasers and users or
15 until these known toxic chemicals are removed from the Products.

16 44. Defendants have knowledge that the normal and reasonably foreseeable use of the
17 Products expose individuals to BPA and/or DEHP, and Defendants intend that exposures to BPA
18 and/or DEHP will occur by its deliberate, non-accidental participation in the importation,
19 distribution, sale and offering of the Products to consumers in California

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

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants 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 Defendants 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: August 18, 2023

BRODSKY SMITH

13 By:  _____

14 Evan J. Smith (SBN242352)

15 Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

16 Telephone: (877) 534-2590

17 Facsimile: (310) 247-0160

18 *Attorneys for Plaintiff*

EXHIBIT “A”

LAW OFFICES
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NEW YORK OFFICE
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 MINEOLA, NY 11501
 516.741.4977

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

August 23, 2022

Member/Manager I.C.B.M., LLC 181 Ferndale Rd. South Wayzata, MN 55391	Alexander Brost, Manager I.C.B.M., LLC 181 Ferndale Road South Wayzata, MN 55391
Member/Manager I.C.B.M., LLC dba Idol Surfboards 181 Ferndale Road South Wayzata, MN 55391	President/CEO/Owner Idol Surfboards 2525 Nevada Ave. North #209 Golden Valley, MN 55427
President/CEO Whistler Village Sports Ltd. 2-4154 Village Green Whistler BC, V8E 1H1 CANADA	President/CEO Evolucion Innovations, Inc. 3500 Stone Way North Seattle, WA 98103
Owner Evo 401 N. 36 th St. #200 Seattle, WA 98103	President/CEO Evolucion Innovations, Inc. c/o CT Corporation System 711 Capitol Way South, Suite 204 Olympia, WA 98501-1267
President/CEO Evo Collective Ltd. 20-22 Wenlock Road London N1 7GU ENGLAND	

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 Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals

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.

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, Bell 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:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
- 2. Alleged Violator(s):** I.C.B.M., LLC; I.C.B.M., LLC dba Idol Surfboards; Idol Surfboards; Evo Collective Ltd.; Whistler Village Sports Ltd.; Evolucion Innovations, Inc.; Evo
- 3. Time Period of Exposure:** Violations have been occurring since at least August 23, 2022 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:**

Product²	Non- Exclusive Examples of the Product
Wake Surf Rope	Idol Surf Wakesurf Rope UPC# 852510008775

- 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

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 Bell'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.

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 Bell 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, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell 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
BRODSKY & SMITH, LLC

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

September 13, 2022

Member/Manager POC USA, LLC c/o Delaware Corporation Organizers, Inc. 1201 North Market St., Floor 18 PO Box 1347 Wilmington, DE 19801	Member/Manager POC USA, LLC c/o Corporation Service Company 15 West South Temple, Suite 600 Salt Lake City, UT 84101
President/CEO POC Sweden AB Nackagatan 4 Stockholm SWEDEN	President/CEO Evolucion Innovations, Inc. 3500 Stone Way N. Seattle, WA 98103
President/CEO Evo 401 N. 36 th Street, #200 Seattle, WA 98103	President/CEO Evolucion Innovations, Inc. c/o CT Corporation System 711 Capitol Way S., Suite 204 Olympia, WA 98501
President/CEO Evo Collective Ltd. 20-22 Wenlock Road London N1 7GU ENGLAND	President/CEO Whistler Village Sports Ltd. 2-4154 village Green Whistler BC, V8E 1H1 CANADA

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, LLC ("Brodsky Smith") represents Ema Bell ("Bell"), 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, Bell 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

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.

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:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817
2. **Alleged Violator(s):** POC USA, LLC; POC Sweden AB.; Evo Collective Ltd.; Whistler Village Sports Ltd.; Evolucion Innovations, Inc.; Evo
3. **Time Period of Exposure:** Violations have been occurring since at least September 13, 2022 and are continuing to this day.
4. **Listed Chemical:** Bisphenol A (BPA). BPA is listed under Proposition 65 as a chemical known to the State to cause reproductive toxicity.
5. **Product:**

Product²	Non- Exclusive Examples of the Product
Helmet	POC Axion Spin MTB Helmet UPC# 7325541012231

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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Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a

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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, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 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 “C”

LAW OFFICES
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September 13, 2022

Member/Manager Gravity Cartel, LLC c/o Tyler Enyedi 6115 E. 18 th Street Vancouver, WA 98661-6977	President/CEO Hostettler AG Hadenmattstrasse 3 Surss, Lucerne, 6210 SWITZERLAND
President/CEO Hostettler Group dba IXS 6210 Sursee, Lucerne, 6210 SWITZERLAND	President/CEO Evo Collective Ltd. 20-22 Wenlock Road London N1 7GU ENGLAND
President/CEO Whistler Village Sports Ltd. 2-4154 Village Green Whistler BC, V8E 1H1 CANADA	President/CEO Evolucion Innovations, Inc. 3500 Stone Way N. Seattle, WA 98103
President/CEO Evo 401 N. 36 th Street, #200 Seattle, WA 98103	President/CEO Evolucion Innovations, Inc. c/o CT Corporation System 711 Capitol Way S., Suite 204 Olympia, WA 98501

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, LLC ("Brodsky Smith") represents Ema Bell ("Bell"), 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, Bell 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

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.

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:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817
2. **Alleged Violator(s):** Gravity Cartel LLC; Hostettler AG; Hostettler Group dba IXS; Evo Collective Ltd.; Whistler Village Sports Ltd.; Evolucion Innovations, Inc.; Evo
3. **Time Period of Exposure:** Violations have been occurring since at least September 13, 2022 and are continuing to this day.
4. **Listed Chemical:** Bisphenol A (BPA). BPA is listed under Proposition 65 as a chemical known to the State to cause reproductive toxicity.
5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Helmet	IXS Trail Evo Helmet UPC# 7630053197278

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 Bell’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 Bell 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, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 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