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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

09/12/2023
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF SAN FRANCISCO

9 GABRIEL ESPINOZA,
10 Plaintiff,

11 vs.

12 WEST MARINE PRODUCTS, INC.,
13 Defendant.

Case No.:

CGC-23-609009

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

14 Plaintiff Gabriel Espinoza (“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 complaint is a representative action brought by Plaintiff in the public interest
24 of the citizens of the State of California to enforce the People’s right to be informed of the health
25 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
26 products sold and/or distributed by defendant West Marine Products, Inc. (“West Marine”) in
27 California.

1 3. DEHP¹ is a harmful chemical known to the State of California to cause cancer and
2 birth defects or other reproductive harm.

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

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

15 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
16 without a requisite exposure warning, (a) *Ronstan*® koozies/drink holders, UPC #
17 9316800615698, and (b) *Magma*® marine kettle grill covers, UPC # 08379000043, (collectively,
18 the “Products” and each a “Product”) that expose persons to DEHP 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 DEHP 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
25 _____
26 ¹ . 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 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
2 with the Products regarding the health hazards of exposure.

3 23. Defendant has processed, marketed, distributed, offered to sell and/or sold the
4 Products in California since at least September 15, 2022 with respect to the *Ronstan*® Product and
5 since at least September 20, 2022 with respect to the *Magma*® Product. The Products continue to
6 be distributed and sold in California without the requisite warning information.

7 24. At all times relevant to this action, Defendant has knowingly and intentionally
8 exposed users and/or consumers of the Products to DEHP without first giving a clear and
9 reasonable exposure warning to such individuals.

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

16 **SATISFACTION OF NOTICE REQUIREMENTS**

17 26. Plaintiff purchased the Products from West Marine. At the time of purchase,
18 Defendant did not provide a Proposition 65 exposure warning for DEHP or any other Proposition
19 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

20 27. The *Ronstan*® Product and the *Magma*® Product were sent to a testing laboratory
21 for phthalate testing to determine the phthalate content of the Products.

22 28. For each Product that was sent to the laboratory, Plaintiff received a chemical test
23 report (collectively, the "Chemical Test Reports" and each a "Chemical Test Report"). The
24 Chemical Test Reports findings determined the *Ronstan*® Product and the *Magma*® Product
25 exposes users to DEHP.

26 29. Plaintiff provided each Chemical Test Report and each Product to an analytical
27 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable
28 and foreseeable use of the Products, exposure to DEHP will occur at levels that require Proposition

1 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
2 Code of Regulations.

3 30. On September 15, 2022, Plaintiff received from the analytical chemist exposure
4 assessment reports for the *Ronstan*® Product that concluded that persons in California who use
5 the *Ronstan*® Product will be exposed to levels of DEHP that require a Proposition 65 exposure
6 warning. On September 20, 2022, Plaintiff received from the analytical chemist an exposure
7 assessment report for the *Magma*® Product that concluded that persons in California who use the
8 *Magma*® Product will be exposed to levels of DEHP that require a Proposition 65 exposure
9 warning.

10 31. On September 15, 2022 (*Ronstan*® koozies/drink holders) and September 20, 2022
11 (*Magma*® marine kettle grill covers), Plaintiff gave notice of alleged violation of Health and
12 Safety Code § 25249.6 (collectively, the “Notices”) to Defendant concerning the exposure of
13 California citizens to DEHP contained in the Products without proper warning, subject to a private
14 action to Defendant and to the California Attorney General’s office and the offices of the County
15 District attorneys and City Attorneys for each city with a population greater than 750,000 persons
16 wherein the herein violations allegedly occurred. See attached at Exhibits “A” – “B” a true and
17 correct copy of the Notices.

18 32. The Notices complied with all procedural requirements of Proposition 65 including
19 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
20 least one person with relevant and appropriate expertise who reviewed relevant data regarding
21 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private
22 action.

23 33. After receiving the Notices, and to Plaintiff’s best information and belief, none of
24 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
25 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
26 the subject of the Notices.

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

1 **FIRST CAUSE OF ACTION**

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

3 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of
4 this Complaint as though fully set forth herein.

5 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
6 the Products.

7 37. Use of the Products will expose users to DEHP, hazardous chemicals found on the
8 Proposition 65 list of chemicals known to be hazardous to human health.

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

10 39. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at since at least September 15, 2022 with respect to the *Ronstan*® Product and since at
12 least September 20, 2022 with respect to the *Magma*® Product, continuing until the present, that
13 Defendant has continued to knowingly and intentionally expose California users and consumers
14 of the Products to DEHP without providing required warnings under Proposition 65.

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

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

24 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
25 Products expose individuals to DEHP, and Defendant intends that exposures to DEHP will occur
26 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
27 the Products to consumers in California.

1 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 Complaint.

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

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

7 **PRAYER FOR RELIEF**

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

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

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

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

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

18 Dated: September 12, 2023

BRODSKY SMITH

19 By: 

Evan J. Smith (SBN242352)

Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

22 Telephone: (877) 534-2590

23 Facsimile: (310) 247-0160

24 *Attorneys for Plaintiff*

EXHIBIT “A”

LAW OFFICES
BRODSKY & SMITH

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www.brodskysmith.com

NEW JERSEY OFFICE
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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

September 15, 2022

President/CEO Ronstan International, Inc. c/o Steven M. Mcinnis, Esquire Admirals Gate Tower 221 Third Street, Suite 510 Newport, RI 02840	President/CEO Ronstan International Pty. Ltd. 19 Park Way Braeside Victoria, 3195 AUSTRALIA
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. 1 East Broward Blvd. Fort Lauderdale, FL 33301
President/CEO West Marine Products, inc. c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203	

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 Gabriel Espinoza ("Espinoza"), 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, Espinoza 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

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.

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:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 424-285-4896.
2. **Alleged Violator(s):** Ronstan international, Inc.; Ronstan International Pty. Ltd.; West Marine Products, Inc.; West Marine Products-Florida, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least September 15, 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
Koozie/Drink Holder	Ronstan Koozie/Drink Holder UPC#93 168006 15698

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 Espinoza 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 &

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 Espinoza'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.

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

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

September 20, 2022

Member/Manager Magma Products, LLC c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203	Member/Manager Magma Products, LLC 3940 Pixie Avenue Lakewood, CA 90712
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. 1 East Broward Blvd. Fort Lauderdale, FL 33301
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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.

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:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 424-285-4896.
2. **Alleged Violator(s):** Magma Products, LLC; West Marine Products, Inc.; West Marine Products-Florida, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least September 20, 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
Grill Cover	Magma Marine Kettle Grill Cover UPC# 0837900043

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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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 Espinoza'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.

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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