

Evan J. Smith, Esquire (SBN 242352)
Ryan P. Cardona, Esquire (SBN 302113)
BRODSKY SMITH
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/21/2025
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

GABRIEL ESPINOZA,
Plaintiff,

vs.

OCEANIC INTERNATIONAL, INC.,
HUISH OUTDOORS, LLC, LP SCUBA,
LLC,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

CGC-25-621564

Plaintiff Gabriel Espinoza ("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 and birth defects or other reproductive harm 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), a toxic chemical found in Hollis

1 regulator bags sold and/or distributed by defendants Oceanic International, Inc., Huish Outdoors,
2 LLC, and/or LP Scuba, LLC (collectively, “Defendants” and each a “Defendant”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and
4 birth defects or other reproductive harm. On January 1, 1988, the State of California listed DEHP
5 as a chemical known to the State to cause cancer and it has come under the purview of Proposition
6 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
7 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
8 known to cause birth defects or other reproductive harm.

9 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
10 within California or sell products therein to comply with Proposition 65 regulations. Included in
11 such regulations is the requirement that businesses must label any product containing a Proposition
12 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
13 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
14 chemical.

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
16 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
17 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
18 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
19 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
20 25249.7.

21 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
22 without a requisite exposure warning, Hollis regulator bags (the “Products”) that expose persons
23 to DEHP when used for their intended purpose.

24 7. Defendants’ failure to warn consumers and other individuals in California of the
25 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
26 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
27 penalties described herein.

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

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code § 25249.7(a).

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

PARTIES

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

12. Defendant Oceanic International, Inc., through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Oceanic International, Inc. is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

13. Defendant Huish Outdoors, LLC, through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Huish Outdoors, LLC is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14. Defendant LP Scuba, LLC, through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

1 Plaintiff alleges that defendant LP Scuba, LLC is a “person” in the course of doing business within
2 the meaning of Health & Safety Code sections 25249.6 and 25249.11.

3 **VENUE AND JURISDICTION**

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

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

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

19 **STATUTORY BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

15 25. Defendants have manufactured, processed, marketed, distributed, offered to sell
16 and/or sold the Products in California since at least March 28, 2024. The Products continue to be
17 distributed and sold in California without the requisite warning information.

18 26. At all times relevant to this action, Defendants have knowingly and intentionally
19 exposed users of the Products to DEHP without first giving a clear and reasonable exposure
20 warning to such individuals.

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

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4

5
67
8

9
0
1
2
3

4
5
6

7
8
9
0
1
2

3
4
5
6
7

35. After receiving the Notice, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged violations which are the subject of the Notice.

FIRST CAUSE OF ACTION

37. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 36 of this Complaint as though fully set forth herein.

39. Use of the Products will expose users and consumers thereof to DEHP, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

41. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since March 28, 2024, continuing until the present, that Defendants have continued to knowingly and intentionally expose California users and consumers of the Products to DEHP without providing required warnings under Proposition 65.

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

