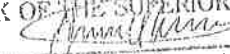


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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 15 2017

CLERK OF THE SUPERIOR COURT  
By   
JAMIE THOMAS, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 DGL GROUP, LTD.,

15 Defendant.

Case No.: RG17860220

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

17 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the  
18 following cause 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  
22 at 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

- 1 -  
COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF - VIOLATION OF  
HEALTH & SAFETY CODE §25249.5

BY FAX

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate  
2 (DINP), toxic chemicals found in auxiliary cables manufactured, sold and/or distributed in  
3 California by defendant DGL Group, Ltd. (“DGL” or “Defendant”) in California.

4 3. DEHP and DINP are harmful chemicals known to the State of California to cause  
5 cancer and/or reproductive toxicity. On January 1, 1988, and on December 20, 2013, the State of  
6 California listed DEHP and DINP, respectively, as chemicals known to the State to cause cancer  
7 and each chemical has come under the purview of Proposition 65 regulations since that time.  
8 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On  
9 October 24, 2003, the State of California listed DEHP as a chemical known to cause  
10 reproductive toxicity. *Id.*

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

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

21 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
22 and/or offers for sale in California, without the required warning, DGL auxiliary cables,  
23 including but not limited to SKU No. 888255121523 (“Product” or “Products”), that contain  
24 DEHP and DINP.

25 7. Defendant’s failure to warn consumers and other individuals in California of the  
26 health hazards associated with exposure to DEHP and DINP in conjunction with the sale,  
27 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects  
28 Defendant to the enjoinder and civil penalties described herein.

1           8.       Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
2 65 in accordance with Health and Safety Code § 25249.7(b).

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

7   **PARTIES**

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

12          11.      Defendant DGL is a wholesaler and manufacturer of electronic equipment and  
13 supplied. Through its business, DGL effectively manufactures, imports, distributes, sells, and/or  
14 offers the Products for sale or use in the State of California, or it implies by its conduct that it  
15 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of  
16 California.

17          12.      Defendant DGL is a "person" in the course of doing business within the meaning  
18 of Health & Safety Code sections 25249.6 and 25249.11.

19   **VENUE AND JURISDICTION**

20          13.      Venue is proper in the County of Alameda because one or more of the instances  
21 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
22 conducted, and continues to conduct, business in the County of Alameda with respect to the  
23 Product.

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

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

7                                   **SATISFACTION OF NOTICE REQUIREMENTS**

8           16.     On March 8, 2016, Plaintiff gave notice of alleged violation of Health and Safety  
9 Code § 25249.6 (the “Notice”) to DGL concerning the exposure of California citizens to DEHP  
10 and DINP contained in the Product without proper warning, subject to a private action to DGL  
11 and to the California Attorney General’s office and the offices of the County District attorneys  
12 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
13 herein violations allegedly occurred.

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

19           18.     After receiving the Notice, and to Plaintiff’s best information and belief, none of  
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
21 a cause of action against DGL under Proposition 65 to enforce the alleged violations which are  
22 the subject of Plaintiff’s notice of violation.

23           19.     Plaintiff is commencing this action more than sixty (60) days from the date of the  
24 Notice to DGL, as required by law.

25                                   **FIRST CAUSE OF ACTION**

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

27           20.     Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of  
28 this complaint as though fully set forth herein.

1           21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
2 and/or retailer of the Product.

3           22. The Product contains DEHP and DINP, hazardous chemicals found on the  
4 Proposition 65 list of chemicals known to be hazardous to human health.

5           23. The Product does not comply with the Proposition 65 warning requirements.

6           24. Plaintiff, based on his best information and belief, avers that at all relevant times  
7 herein, and at least since December 2, 2016, continuing until the present, that DGL has continued  
8 to knowingly and intentionally expose California users and consumers of the Product to DEHP  
9 and DINP without providing required warnings under Proposition 65.

10          25. The exposures that are the subject of the Notice result from the purchase,  
11 acquisition, handling and recommended use of the product. Consequently, the primary route of  
12 exposure to these chemicals is through dermal exposure through direct contact. The potential  
13 exists for dermal exposure of DEHP and DINP through direct contact with the user's bare hands  
14 when the connector sleeve is handled or placed in a stereo jack. If the cable is stored or  
15 transported in a carrier, DEHP and DINP that leaches from the connector sleeve may  
16 contaminate other articles contained within the carrier bag that are subsequently handled by the  
17 user. Finally, while mouthing of the product does not seem likely, some amount of exposure  
18 through ingestion can occur by touching the product with subsequent touching of the users hand  
19 to mouth.

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

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

27          28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
28 Complaint.

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

30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically 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 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 Product;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: May 15, 2017

BRODSKY & SMITH, LLC

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