

ENDORSED
FILED
ALAMEDA COUNTY

JUL 01 2016

CLERK OF THE SUPERIOR COURT
By ~~Xian-Xii Bowie~~

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

10 KAREN CALACIN,

11 Plaintiff,

12 vs.

13 IM BRANDS LLC and MARSHALLS
14 OF MA, INC.,

15 Defendants.

Case No. **RG 16821808**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

16
17 Plaintiff Karen Calacin (“Plaintiff” or “Calacin”), by and through her attorneys, alleges
18 the 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 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

BY FAX

1 luggage tags sold and/or distributed by defendants IM Brands, LLC (“IM Brands”), and
2 Marshalls of MA, Inc. (“Marshalls”) (collectively, “Defendants”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and
4 reproductive toxicity. On January 1, 1988 the State of California listed DEHP as a chemical
5 known to the State to cause cancer and it has come under the purview of Proposition 65
6 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 developmental male reproductive toxicity. *Id.*

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

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

19 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
20 and/or offers for sale, without the required warning, luggage tags in California containing DEHP.
21 These products include, but are not limited to, *Isaac Mizrahi* luggage tags, *UPC No.*
22 *10532028287* (the “Product”).

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

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

1 FIRST CAUSE OF ACTION

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

3 21. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 20 of
4 this complaint as though fully set forth herein.

5 22. Defendants have, at all times mentioned herein, acted as a manufacturer,
6 distributor, and/or retailer of the Product.

7 23. The Product contains DEHP, hazardous chemicals found on the Proposition 65
8 list of a chemical known to be hazardous to human health.

9 24. The Product does not comply with the Proposition 65 warning requirements.

10 26. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since February 9, 2016, continuing until the present, that Defendants have
12 continued to knowingly and intentionally expose California users and consumers of the Product
13 to DEHP without providing required warnings under Proposition 65.

14 27. The exposures that are the subject of this notice result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals is through dermal exposure. The potential exists for dermal
17 exposure of DEHP through direct contact with the user's bare hands when the luggage tag is
18 installed or subsequently manipulated. If the luggage tag is stored or transported in a carrier,
19 DEHP that leaches from the luggage tag may contaminate other articles contained within the
20 carrier bag that are subsequently handled by the user. Finally, while mouthing of the product
21 does not seem likely, some amount of exposure through ingestion can occur by touching the
22 product with subsequent touching of the users hand to mouth.

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

26 29. Defendants have knowledge that the normal and reasonably foreseeable use of the
27 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
28

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
2 sale and offering of the Product to consumers in California

3 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
4 Complaint.

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

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

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
12 following relief:

- 13 A. That the court assess civil penalties against Defendants in the amount of
14 \$2,500 per day for each violation in accordance with Health and Safety
15 Code § 25249.7(b);
- 16 B. That the court preliminarily and permanently enjoin Defendants
17 mandating Proposition 65 compliant warnings on the Product;
- 18 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 19 D. That the court grant any further relief as may be just and proper.

20
21 Dated: June 30, 2016

BRODSKY & SMITH, LLC

22 By:  _____

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