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ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 18 2016

CLERK OF THE SUPERIOR COURT  
By Sue Resko Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 KAREN CALACIN,

11 Plaintiff,

12 vs.

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

15 Defendants.

Case No.: RG16821808

**AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

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

16 Plaintiff Karen Calacin ("Plaintiff" or "Calacin"), by and through her attorneys, alleges  
17 the following cause of action in the public interest of the citizens of the State of California.  
18

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  
luggage tags sold and/or distributed by defendants IM Brands, LLC ("IM Brands"), Marshalls of

1 MA, Inc. (“Marshalls”), and MIWorld Accessories, LLC (“MIWorld”) (collectively,  
2 “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 Defendants produce, manufacture, distribute, import, sell,  
20 and/or offer 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 Defendant MIWorld is considered a “person” in the course of doing business within the meaning  
2 of Health & Safety Code §§ 25249.6 and 25249.11.

3 **VENUE AND JURISDICTION**

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

8 15. 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  
11 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
12 this Court has jurisdiction over this lawsuit.

13 16. This Court has jurisdiction over Defendant because it has sufficient minimum  
14 contacts with the State of California, and/or has otherwise purposefully availed itself of the  
15 California market. Such purposeful availment has rendered the exercise of jurisdiction by  
16 California courts consistent and permissible with traditional notions of fair play and substantial  
17 justice.

18 **SATISFACTION OF NOTICE REQUIREMENTS**

19 17. On March 21, 2016, Plaintiff gave notice of alleged violation of Health and Safety  
20 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to  
21 DEHP contained in the Product without proper warning, subject to a private action to Defendants  
22 and to the California Attorney General’s office and the offices of the County District attorneys  
23 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
24 herein violations allegedly occurred.

25 18. The Notice complied with all procedural requirements of Proposition 65 including  
26 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
27 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
28

1 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a  
2 private action.

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

7 20. Plaintiff is commencing this action more than sixty (60) days from the date of his  
8 notice to Defendants, as required by law.

9 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

22 26. The exposures that are the subject of this notice result from the purchase,  
23 acquisition, handling and recommended use of the product. Consequently, the primary route of  
24 exposure to these chemicals is through dermal exposure. The potential exists for dermal  
25 exposure of DEHP through direct contact with the user's bare hands when the luggage tag is  
26 installed or subsequently manipulated. If the luggage tag is stored or transported in a carrier,  
27 DEHP that leaches from the luggage tag may contaminate other articles contained within the  
28 carrier bag that are subsequently handled by the user. Finally, while mouthing of the product

1 does not seem likely, some amount of exposure through ingestion can occur by touching the  
2 product with subsequent touching of the users hand to mouth.

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

6 28. Defendants have knowledge that the normal and reasonably foreseeable use of the  
7 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur  
8 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
9 sale and offering of the Product to consumers in California

10 29. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
11 Complaint.

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

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

17 **PRAYER FOR RELIEF**

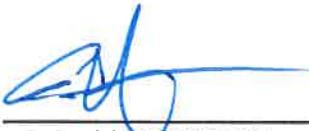
18 WHEREFORE, Plaintiff demands judgment against Defendants and requests the  
19 following relief:

- 20 A. That the court assess civil penalties against Defendants in the amount of  
21 \$2,500 per day for each violation in accordance with Health and Safety  
22 Code § 25249.7(b);
- 23 B. That the court preliminarily and permanently enjoin Defendants  
24 mandating Proposition 65 compliant warnings on the Product;
- 25 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 26 D. That the court grant any further relief as may be just and proper.

27  
28 Dated: August 19, 2016

BRODSKY & SMITH, LLC

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By:   
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**PROOF OF SERVICE**

I, Evan J. Smith, Esquire, declare:

I am over the age of 18 years and not a party to this action; my business address is 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212 and 333 E. City Avenue, Suite 510, Bala Cynwyd, PA 19004.

On August 19, 2016, I served the following document:

**PLAINTIFF'S AMENDED COMPLAINT**

by serving a true copy of the above-described document in the following manner:

**BY ELECTRONIC MAIL & FEDERAL EXPRESS OVERNIGHT DELIVERY**

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The above-described documents were transmitted via electronic mail and federal express overnight delivery to the following parties on August 19, 2016:

**Lauren Shoor** | Associate  
Norton Rose Fulbright US LLP  
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*Attorney for Defendants*

I declare under penalty of perjury under the laws of California and of the United States of America that the above is true and correct.

Executed on August 19, 2016, at Bala Cynwyd, Pennsylvania.



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Evan J. Smith