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ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 07 2016

CLERK OF THE SUPERIOR COURT

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,  
11 Plaintiff,  
12 vs.  
13 ZAGG, INC.,  
14 Defendant.

Case No.: **RG 16841 439**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

16 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the  
17 following cause of action in the public interest of the citizens of the State of California.  
18

BACKGROUND OF THE CASE

19  
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 Diisononyl phthalate ("DINP") and Di(2-ethylhexyl) phthalate

1 (DEHP), toxic chemicals found in ifrogz headphones sold and/or distributed by defendant Zagg,  
2 Inc. (“Zagg” or “Defendant”) in California.

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

10 4. Proposition 65 requires all person in the course of doing business for purposes of  
11 the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section  
12 25249.6, et seq. ("Proposition 65") that operate within California or sell products therein, to  
13 comply with Proposition 65 regulations. Included in such regulations is the requirement that  
14 businesses must label any product containing a Proposition 65-listed chemical with a “clear and  
15 reasonable” warning before “knowingly and 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 or threaten to violate” the statute. Health & Safety  
20 Code § 25249.7.

21 6. Plaintiff alleges that Zagg produces, manufactures, distributes, imports, sells,  
22 and/or offers for sale in California ifrogz headphones, in various colors, styles and sizes (the  
23 “Products”), without the required Proposition 65 warning that the products contain DEHP and  
24 DINP.

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



1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
2 this Court has jurisdiction over this lawsuit.

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

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On May 23, 2016, Plaintiff gave notice of alleged violation of Health and Safety  
11 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to  
12 DINP and DEHP contained in the Products without proper warning, subject to a private action to  
13 Defendant and to the California Attorney General’s office and the offices of the County District  
14 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
15 wherein the herein violations allegedly occurred.

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

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

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of his  
26 notice to Defendant, as required by law.

27 **FIRST CAUSE OF ACTION**

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

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

3           21.     Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
4 and/or retailer of the Products.

5           22.     The Products contain DEHP and DINP, hazardous chemicals found on the  
6 Proposition 65 list of chemicals known to be hazardous to human health.

7           23.     The Products do not comply with the Proposition 65 warning requirements.

8           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
9 herein, and at least since March 31, 2016, continuing until the present, that Defendant has  
10 continued to knowingly and intentionally expose California users and consumers of the Products  
11 to DINP and DEHP without providing required warnings under Proposition 65.

12           25.     With respect to the Products, the exposures that are the subject of this notice  
13 result from the purchase, acquisition, handling and recommended use of the product.  
14 Consequently, the primary route of exposure to these chemicals is through skin exposure. The  
15 ear cushion cover of these headphones is likely to be in constant contact with the user's ears and  
16 during normal expected use and direct skin exposure is likely to occur. Skin exposure through  
17 direct contact with the user's hands is possible during application, removal, and manipulation of  
18 the headphones. Should the wearer's skin perspire underneath the ear cushion, aqueous DEHP  
19 skin permeation rates have been reported to be faster than neat DEHP permeation. Although the  
20 association between HMWP phthalates such as DEHP and atopic dermatitis has never been  
21 elucidated, as a multitude of chemicals are present in headphones that come into contact with  
22 human skin, DEHP in headphones and hearing protection aids has been reported to induce  
23 contact dermatitis. The ear cushion cover can be expected to emit gas phase DEHP into the air  
24 over the lifetime of the product. This gas phase DEHP can potentially be inhaled as the product  
25 is used in the vicinity of the user's facial area. Finally, while mouthing of the product does not  
26 seem likely, some amount of exposure through ingestion can occur by handling the product with  
27 subsequent touching of the users hand to mouth.

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