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ENDORSED
FILED
ALAMEDA COUNTY

NOV 23 2016

CLERK OF THE SUPERIOR COURT
By *Jamie Thomas*
JAMIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 EMA BELL,
11 Plaintiff,
12 vs.
13 SANTANA TESORO, LLC, THE TJX
14 OPERATING COMPANIES, INC., NBC
15 FOURTH REALTY CORP.,
16 Defendants.

Case No.: **RG16840058**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

BY FAX

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

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 Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
wristlet clutches, including but not limited to, the Carlos by Carlos Santana Perforated Wristlet

1 Clutch, Style Number 58526260 (the “Product”) that is manufactured, sold, and/or distributed by
2 defendants Santana Tesoro, LLC (“Santana”), The TJX Operating Companies, Inc., and NBC
3 Fourth Realty Corp. (collectively, “TJ Maxx”) in California. TJ Maxx and Santana are
4 collectively referred to herein as, “Defendants”.

5 3. DEHP is a harmful chemical known to the State of California to cause cancer and
6 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
7 known to cause cancer and it has come under the purview of Proposition 65 regulations since
8 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
9 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to
10 cause reproductive toxicity.

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

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 Defendants distribute, manufacture, produce, import, sell,
22 and/or offer for sale in California the Product without the required warning that the Product
23 exposes users, purchasers, workers and other individuals to the chemical DEHP.

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

28

1 The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington,
2 DE 19801.

3 15. Upon information and belief, Plaintiff avers that each defendant acted as an
4 employee, servant, or agent of each other defendant at all times relevant to this action. Plaintiff
5 further avers that in conducting the activities alleged in this Complaint, the Defendants acted
6 within the scope of their agency or similarly situated relationship as toward one another.
7 Therefore the Defendants acted with consent, permission, and authorization of each other in
8 relation to all acts related to the scope of this Complaint. Upon information and belief, Plaintiff
9 avers that at all relevant times herein, each defendant was a person doing business within the
10 meaning of Health and Safety Code § 25249.11(b) and that each and every defendant had ten
11 (10) or more employees at all relevant times.

12 VENUE AND JURISDICTION

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

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

22 18. This Court has jurisdiction over Defendants as each Defendant either is a citizen
23 of the State of California, has sufficient minimum contacts with the State of California, is
24 registered with the California Secretary of State as foreign corporations authorized to do business
25 in the State of California, and/or have otherwise purposefully availed themselves of the
26 California market. Such purposeful availment has rendered the exercise of jurisdiction by
27 California courts consistent and permissible with traditional notions of fair play and substantial
28 justice.

1 SATISFACTION OF NOTICE REQUIREMENTS

2 19. On August 12, 2016, Plaintiff gave notice of alleged violations of Health and
3 Safety Code § 25249.6, (the “Notice”) concerning the exposure of California citizens to DEHP in
4 the Product without proper warning, subject to a private action to the Defendants and to the
5 California Attorney General’s office and the offices of the County District attorneys and City
6 Attorneys for each city with a population greater than 750,000 persons wherein the herein
7 violations allegedly occurred.

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

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

17 22. Plaintiff is commencing this action more than sixty (60) days from the date of the
18 Notice to Defendants, as required by law.

19 FIRST CAUSE OF ACTION

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

21 23. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 22 of
22 this complaint as though fully set forth herein.

23 24. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
24 and/or retailer of the Product.

25 25. The Product contains DEHP, a hazardous chemical found on the Proposition 65
26 list of a chemical known to be hazardous to human health.

27 26. The Product does not comply with the Proposition 65 warning requirements.
28

1 27. Plaintiff, based on his best information and belief, avers that at all relevant times
2 hereto, and at least since June 23, 2016, continuing until the present, that Defendants have
3 continued to knowingly and intentionally expose California users and consumers of the Product
4 to DEHP without providing required warnings under Proposition 65.

5 28. The exposures that are the subject of this notice result from the purchase,
6 acquisition, handling and recommended use of the product. Consequently, the primary route of
7 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
8 DEHP by dermal absorption through direct skin contact with the wristlet clutch during routine
9 use when the clutch is grasped, opened, manipulated with bare hands, or worn on the user's
10 wrist. The product can be expected to emit gas phase DEHP into the air over the lifetime of the
11 product. Concentrations of gas phase DEHP can be expected to build within the small, enclosed
12 interior of the clutch. This gas phase DEHP can potentially be absorbed to the surface of the
13 interior contents of the clutch. When handled, these items can provide an indirect source of
14 dermal transfer of DEHP to the user's hands when the contents are grasped with bare hands. If
15 the clutch is stored or transported in a carrier or a drawer, DEHP that leaches from the clutch
16 may contaminate other articles contained within the carrier bag or drawer that are subsequently
17 handled by the user. Finally, while mouthing of the product does not seem likely, some amount
18 of exposure through ingestion can occur by touching the product with subsequent touching of the
19 user's hand to mouth, or if the interior contents should become contaminated with DEHP that has
20 leached from the clutch and these contents subsequently come into contact with the user's mouth
21 or are ingested.

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

25 30. Defendants have knowledge that the normal and reasonably foreseeable use of the
26 Product expose individuals to DEHP, and Defendants intend that exposure to DEHP will occur
27 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
28 sale and offering of the Product to consumers in California

1 31. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 Complaint without success.

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

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


8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
10 following relief:

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

18
19 Dated: November 23, 2016

BRODSKY & SMITH, LLC

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