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ENDORSED  
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
By: D. OLIVER, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

vs.

MYSTIC APPAREL, LLC,

Defendant.

Case No.: RB17855650

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

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

**BACKGROUND OF THE CASE**

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business shall knowingly and intentionally expose any

individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual ..." Health & Safety Code § 25249.6.

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Mystic Apparel duffel bags, UPC No. 7 09996 71732 8 (the "Product") that is manufactured,

1 sold, and/or distributed by defendant Mystic Apparel, LLC ("Mystic Apparel" or "Defendant")  
2 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 cause cancer and it has come under the purview of Proposition 65 regulations since  
6 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
7 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to  
8 cause developmental reproductive toxicity.

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

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 distributes, manufactures, produces, imports, sells,  
20 and/or offers for sale in California the Product without the required warning that the Product  
21 exposes users, purchasers, and other individuals to the chemical DEHP.

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

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

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

**PARTIES**

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

11. Defendant Mystic Apparel manufactures, imports, distributes, sells, and/or offers the Product for sale or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.

13. Defendant Mystic Apparel maintains a registered agent for service of process at c/o Charles Mizrahi, 34 West 33<sup>rd</sup> Street, New York, NY 10001.

14. Upon information and belief, Plaintiff avers that at all relevant times herein, defendant was a person doing business within the meaning of Health and Safety Code § 25249.11(b).

## VENUE AND JURISDICTION

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

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

1           17.     This Court has jurisdiction over Defendant as each defendant either is a citizen of  
2 the 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 have otherwise purposefully availed themselves of the California  
5 market. 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           18.     On December 2, 2016, Plaintiff gave notice of alleged violations of Health and  
9 Safety Code § 25249.6, (the "Notice") concerning the exposure of California citizens to DEHP in  
10 the Product without proper warning, subject to a private action to the Defendant and to the  
11 California Attorney General's office and the offices of the County District attorneys and City  
12 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
13 violations allegedly occurred.

14           19.     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 exposure, and that counsel believed there was meritorious and reasonable cause for a  
18 private action.

19           20.     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 Defendant under Proposition 65 to enforce the alleged violations which  
22 are the subject of Plaintiff's notice of violation.

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

25                               **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

10          27. The exposures that are the subject of this 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. Dermal exposure through the user's  
13 hands is possible during insertion and removal of items into the clear PVC zippered pouch, and  
14 during routine handling of the zippered pouch. Should the pouch come into contact with water  
15 or humidity or should the user touch the pouch with wet hands, aqueous DEHP skin permeation  
16 rates have been reported to be faster than neat DEHP permeation. The product can be expected  
17 to emit gas phase DEHP into the air over the lifetime of the product. Concentrations of gas  
18 phase DEHP can be expected to build within the small, enclosed interior of the zippered pouch.  
19 If the clear PVC zippered pouch is placed in the large duffel bag with other items, DEHP that  
20 leaches from the clear PVC zippered pouch may contaminate other articles within the duffel bag  
21 that are subsequently handled or worn by people. Items placed within the clear PVC zippered  
22 pouch can become contaminated with DEHP and dermal exposure is possible when these  
23 contaminated articles are handled. If used as a cosmetic/toiletry bag, gas phase DEHP can  
24 potentially be absorbed to the surface of the interior contents which could include makeup brush  
25 handles, brush hairs, and makeup particles that remain on the brushes. When used to apply  
26 makeup, these brushes can provide an indirect source of dermal transfer of DEHP to the user's  
27 hands when the handles are grasped with bare hands. The contaminated brushes can also provide  
28 an indirect source of dermal transfer of DEHP to the user's facial area when the brush hairs

1 contact the user's facial area and contaminated makeup particles are applied to the user's facial  
2 skin. Finally, while mouthing of the product does not seem likely, some amount of exposure  
3 through ingestion can occur by touching the product with subsequent touching of the user's hand  
4 to mouth, if the contaminated brush hairs come into contact with the users mouth during the  
5 application of makeup, or if makeup that is applied to the lips becomes contaminated with DEHP  
6 that has leached from the PVC zippered pouch.

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

10 29. Defendant has knowledge that the normal and reasonably foreseeable use of the  
11 Product expose individuals to DEHP, and Defendant intends that exposure to DEHP will occur  
12 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
13 sale and offering of the Product to consumers in California.

14 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
15 Complaint without success.

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

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

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
22 following relief:


- 23 A. That the court assess civil penalties against each and every defendant in  
24 the amount of \$2,500 per day for each violation in accordance with Health  
25 and Safety Code § 25249.7(b);
- 26 B. That the court preliminarily and permanently enjoin Defendant mandating  
27 Proposition 65 compliant warnings on the Product;
- 28 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.

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D. That the court grant any further relief as may be just and proper.

Dated: April 6, 2017

BRODSKY & SMITH, LLC

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