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ENDORSED
FILED
ALAMEDA COUNTY

JAN 31 2018

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

vs.

2 MODA FASHION, INC., DAVID'S
WHOLESALE CLOTHING, INC.,

Defendants.

Case No. PG18391424

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

Plaintiff Ema 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 Ema Bell ("Plaintiff" or "Bell"), 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.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People's right to be informed of the health
3 hazards caused by exposure Di(2-ethylhexyl) phthalate ("DEHP"), a toxic chemical found in
4 cosmetic bags, apparel bags, backpacks and/or fanny packs sold and/or distributed by defendants
5 2 Moda Fashion, Inc. ("2 Moda") and David's Wholesale Clothing, Inc. ("David's Wholesale")
6 (collectively, "Defendants") in California.

7 3. DEHP is a harmful chemical known to the State of California to cause cancer and
8 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
9 known to the State to cause cancer and it has come under the purview of Proposition 65
10 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
11 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
12 known to cause developmental male reproductive toxicity. *Id*

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

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

23 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,
24 and/or offer for sale, without the required warning, cosmetic bags, apparel bags, backpacks
25 and/or fanny packs (the "Products") in California that expose persons to DEHP.

26 7. Defendants' failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
28

1 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to the
2 enjoinder and civil penalties described herein.

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

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

9 PARTIES

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

14 11. Defendant 2 Moda, through its business, effectively manufactures, imports,
15 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies
16 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale
17 or use in the State of California. 2 Moda maintains a registered agent for service of process at
18 c/o Pedro L. Ramos, 7600 NW 186 St., Miami, FL 33015. Plaintiff alleges that defendant 2
19 Moda is a “person” in the course of doing business within the meaning of Health & Safety Code
20 sections 25249.6 and 25249.11.

21 12. Defendant David’s Wholesale, through its business, effectively manufactures,
22 imports, distributes, sells, and/or offers the Product for sale or use in the State of California, or it
23 implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product
24 for sale or use in the State of California. David’s Wholesale maintains a registered agent for
25 service of process at c/o David R. Bloom, 336 Poinciana IS Drive, Miami, FL 33160. Plaintiff
26 alleges that defendant David’s Wholesale is a “person” in the course of doing business within the
27 meaning of Health & Safety Code sections 25249.6 and 25249.11.

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1 bag that are subsequently handled, won, or consumed by the user. Items that are contaminated
2 with DEHP that are handled or worn will result in dermal exposure to DEHP. Should DEHP
3 contaminated food or beverages be consumed or mouthed, ingestion of DEHP can occur.
4 Finally, while mouthing of the item does not seem likely, some amount of exposure through
5 ingestion can occur by touching the product with subsequent touching of the user's hand to
6 mouth.

7 26. 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 is removed from the Product.

10 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
11 Product exposes individuals to DEHP, and Defendants intend that exposures 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 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
15 Complaint.

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

18 30. 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 Defendants.

20 **PRAYER FOR RELIEF**

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

- 23 A. That the court assess civil penalties against Defendants in the amount of
24 \$2,500 per day for each violation in accordance with Health and Safety
25 Code § 25249.7(b);
- 26 B. That the court preliminarily and permanently enjoin Defendants
27 mandating 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: January 31, 2018

BRODSKY & SMITH, LLC

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