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ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 18 2017

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By \_\_\_\_\_

8 Attorneys for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 EMA BELL,  
12 Plaintiff,

13 v.

14 ABUS USA, LLC,  
15 Defendant.

Case No.: RG17875695

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

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

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  
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**BY FAX**

1 hazards caused by exposure to DINP, Di-isodecyl phthalate (DIDP); Di(2-ethylhexyl)phthalate  
2 (DEHP); Butyl benzyl phthalate (BBP), Di-n-hexyl Phthalate (DnHP) and Di-n-butyl Phthalate  
3 (DBP) (“Listed Phthalates”), toxic chemicals found in Abus security products that are  
4 manufactured, sold and/or distributed in California by defendant Abus USA, LLC (“Abus” or  
5 “Defendant”) under various trade names in California.

6 3. The Listed Phthalates are hazardous chemicals and each Listed Phthalate has  
7 come under the purview of Proposition 65 regulations since its listing on the Proposition 65 list  
8 of chemicals known to be hazardous to human health. Cal. Code Regs. Tit. 27, § 27001(c);  
9 Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
21 and/or offers for sale in California Abus security products of various size, configuration and  
22 packaging, including but not limited to padlocks, U-shackle locks, foldable locks, bicycle locks,  
23 motorbike locks, cable locks, bicycle frame locks, lock chains; keys and key blanks, component  
24 security products, cables, security boxes, and lock holders (“Product” or “Products”), without  
25 requisite Proposition 65 warning labels that the Products contain the Listed Phthalates.

26 7. Defendant’s failure to warn consumers and other individuals in California of the  
27 health hazards associated with exposure to the Listed Phthalates in conjunction with the sale,  
28

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

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

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
6 Defendant to provide purchasers or users of the Product with the required warnings related to the  
7 dangers and health hazards associated with exposure to the Listed Phthalates pursuant to Health  
8 and Safety 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 Abus is a manufacturer of preventative security technology as well as a  
15 market leader in bike locks. Through its business, Abus effectively manufactures, imports,  
16 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
17 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale  
18 or use in the State of California. Defendant Abus maintains a registered agent for service of  
19 process at c/o National Registered Agents, Inc., 3800 N. Central Ave., Suite 460, Phoenix, AZ  
20 85012.

21 12. Defendant Abus is a "person" in the course of doing business within the meaning  
22 of Health & Safety Code sections 25249.6 and 25249.11.

23 **VENUE AND JURISDICTION**

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

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1 26. Plaintiff, based on her best information and belief, avers that such exposures will  
2 continue every day until clear and reasonable warnings are provided to Products' purchasers and  
3 users or until these known toxic chemicals are removed from the Product.

4 27. Defendant has knowledge that the normal and reasonably foreseeable use of the  
5 Products exposes individuals to the Listed Phthalates, and Defendant intends that exposures to  
6 the Listed Phthalates will occur by their deliberate, non-accidental participation in the  
7 manufacture, importation, distribution, sale and offering of the Products to consumers in  
8 California

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

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

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

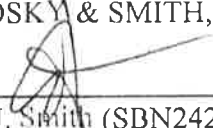
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
17 following relief:

- 18 A. That the court assess civil penalties against Defendant in the amount of  
19 \$2,500 per day for each violation in accordance with Health and Safety  
20 Code § 25249.7(b);
- 21 B. That the court preliminarily and permanently enjoin Defendant mandating  
22 Proposition 65 compliant warnings on the Product;
- 23 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 24 D. That the court grant any further relief as may be just and proper.

25  
26 Dated: September 18, 2017

BRODSKY & SMITH, LLC

27 By:   
Evan J. Smith (SBN242352)  
28 Ryan P. Cardona (SBN302113)

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