ENDORSED FILED ALAMEDA COUNTY Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113) SEP 1 8 2017 BRODSKY & SMITH, LLC 9595 Wilshire Blvd., Ste. 900 SUE PESKO Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160 5 Attorneys for Plaintiff 6 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 COUNTY OF ALAMEDA 9 10 EMA BELL, 11 RG17875695 Case No.: Plaintiff. 12 COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF 13 V. ABUS USA, LLC, (Violation of Health & Safety Code §25249.5 et seq.) Defendant. 15 16 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 28

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF – VIOLATION OF HEALTH & SAFETY CODE §25249.5

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

- 3. The Listed Phthalates are hazardous chemicals and each Listed Phthalate has come under the purview of Proposition 65 regulations since its listing on the Proposition 65 list of chemicals known to be hazardous to human health. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
- 4. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to it.
- 5. Proposition 65 allows for civil penaltics of up to \$2,500.00 per day per violation to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate[s] or threaten[s] to violate" the statute. Health & Safety Code § 25249.7.
- 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells, and/or offers for sale in California Abus security products of various size, configuration and packaging, including but not limited to padlocks, U-shackle locks, foldable locks, bicycle locks. motorbike locks, cable locks, bicycle frame locks, lock chains; keys and key blanks, component security products, cables, security boxes, and lock holders ("Product" or "Products"), without requisite Proposition 65 warning labels that the Products contain the Listed Phthalates.
- 7. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposure to the Listed Phthalates in conjunction with the sale,

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

- 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b).
- 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 the Listed Phthalates 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 products sold in California and to improve human health by reducing hazardous substances contained in such items. She brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).
- 11. Defendant Abus is a manufacturer of preventative security technology as well as a market leader in bike locks. Through its business, Abus effectively manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Defendant Abus maintains a registered agent for service of process at c/o National Registered Agents, Inc., 3800 N. Central Ave., Suite 460, Phoenix, AZ. 85012.
- 12. Defendant Abus is a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

## **VENUE AND JURISDICTION**

13. 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 continues to conduct, business in the County of Alameda with respect to the Product.

- 14. 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.
- 15. This Court has jurisdiction over Defendant because it is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or has otherwise purposefully availed itself of the California market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

# SATISFACTION OF NOTICE REQUIREMNTS

- 16. On March 29, 2017, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the "Notice") to Abus concerning the exposure of California citizens to the Listed Phthalates contained in the Products without proper warning, subject to a private action to Abus and to the California Attorney General's office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.
- 17. The Notice complied with all procedural requirements of Proposition 65 including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding the Listed Phthalates exposure, and that counsel believed there was meritorious and reasonable cause for a private action.
- 18. After receiving the Notice, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Abus under Proposition 65 to enforce the alleged violations which are the subject of Plaintiff's notice of violation.

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

#### FIRST CAUSE OF ACTION

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

- 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of this complaint as though fully set forth herein.
- Defendant has, at all times mentioned herein, acted as manufacturer, distributer. 21. and/or retailer of the Products.
- 22. The Products contain the Listed Phthalates, hazardous chemicals found on the Proposition 65 list of chemicals known to be hazardous to human health.
  - The Products do not comply with the Proposition 65 warning requirements. 23.
- 24. Plaintiff, based on her best information and belief, avers that at all relevant times herein, and at least since November 1, 2016, continuing until the present, that Abus has continued to knowingly and intentionally expose California users and consumers of the Products to the Listed Phthalates without providing required warnings under Proposition 65.
- 25. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users may potentially be exposed to the Listed Phthalates by dermal absorption through direct skin contact when the Products are manipulated with bare hands. Should the Products be handled when they are wet or with wet hands, aqueous HMWP skin permeation rates have been reported to be faster than neat HMWP permeation. The Products can be expected to emit gas phase phthalates into the air over the lifetime of the product. If the Products are stored or transported in a carrier, the Listed Phthalates that leach from the Products may contaminate other articles contained within the carrier bag that are subsequently handled, worn, or consumed by the user. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the Products, with subsequent touching of the user's hand to mouth.

- Plaintiff, based on her best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to Products' purchasers and users or until these known toxic chemicals are removed from the Product.
- Defendant has knowledge that the normal and reasonably foreseeable use of the Products exposes individuals to the Listed Phthalates, and Defendant intends that exposures to the Listed Phthalates will occur by their deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Products to consumers in
- Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
- Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.
- Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

## PRAYER FOR RELIEF

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

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

Dated: September 18, 2017 BRODSKY & SMITH, LLC

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