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ENDORSED
FILED
ALAMEDA COUNTY

FEB 19 2020

CLERK OF THE SUPERIOR COURT
By AMRIT KHAN Deputy

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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 M&S ACCESSORY NETWORK
CORP., THE TJX COMPANIES, INC.,

15 Defendants.

Case No.: RG19019377

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

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

Judge: Stephen Kaus
Dept: 19

16 Plaintiffs Ema Bell ("Bell") and Anthony Ferreiro ("Ferreiro") (collectively, "Plaintiffs"),
17 by and through their attorneys, alleges the following cause of action in the public interest of the
18 citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiffs bring 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 first amended complaint is a representative action brought by Plaintiffs in the
27 public interest of the citizens of the State of California to enforce the People's right to be
28 informed of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and

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1 diisononyl phthalate (DINP), toxic chemicals found in Gabba Goods headset travel bags and
2 armband phone holders/cases manufactured, sold, and/or distributed by defendants M&S
3 Accessory Network Corp. (“M&S”) and The TJX Companies, Inc. (“TJX”) (collectively,
4 “Defendants”) in California.

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

11 4. DINP is a harmful chemical known to the State of California to cause cancer. On
12 December 20, 2013, the State of California listed DINP as a chemical known to the State to
13 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
14 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

25 7. Plaintiffs allege that Defendants manufacture, distribute and/or offer for sale in
26 California, without a requisite exposure warning, Gabba Goods headset travel bags and armband
27 phone holders/cases (the “Products”) that expose persons to DEHP and DINP respectively.

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1 8. Defendants' failure to warn consumers and other individuals in California of the
2 health hazards associated with exposure to DEHP and/or DINP in conjunction with the sale
3 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to the
4 enjoinder and civil penalties described herein.

5 9. Plaintiffs seek civil penalties against Defendants for their violations of
6 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

7 10. Plaintiffs also seek injunctive relief, preliminarily and permanently, requiring
8 Defendants to provide purchasers or users of the Products with required warnings related to the
9 dangers and health hazards associated with exposure to DEHP and/or DINP pursuant to Health
10 and Safety Code § 25249.7(a).

11 **PARTIES**

12 11. Plaintiff Bell is a citizen of the State of California acting in the interest of the
13 general public to promote awareness of exposures to toxic chemicals in products sold in
14 California and to improve human health by reducing hazardous substances contained in such
15 items. She brings this action in the public interest pursuant to Health and Safety Code §
16 25249.7(d).

17 12. Plaintiff Ferreiro is a citizen of the State of California acting in the interest of the
18 general public to promote awareness of exposures to toxic chemicals in products sold in
19 California and to improve human health by reducing hazardous substances contained in such
20 items. He brings this action in the public interest pursuant to Health and Safety Code §
21 25249.7(d).

22 13. Defendant M&S, through its business, effectively manufactures, imports,
23 distributes, sells, and/or offers the Gabba Goods headset travel bags for sale or use in the State of
24 California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or
25 offers the Products for sale or use in the State of California. Bell alleges that defendant M&S is a
26 "person" in the course of doing business within the meaning of Health & Safety Code sections
27 25249.6 and 25249.11.

28

1 14. Defendant TJX, through its business, effectively imports, distributes, sells, and/or
2 offers the Gabba Goods headset travel bags for sale or use in the State of California, or it implies
3 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the
4 State of California. Bell alleges that defendant TJX is a “person” in the course of doing business
5 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

6 **VENUE AND JURISDICTION**

7 15. Venue is proper in the County of Alameda because one or more of the instances
8 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
9 conducted, and continue to conduct, business in the County of Alameda with respect to the
10 Products.

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

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

22 **SATISFACTION OF NOTICE REQUIREMNTS**

23 18. On May 23, 2018 (Bell) and April 5, 2019 (Ferreiro), Plaintiffs gave notice of
24 alleged violation of Health and Safety Code § 25249.6 (the “Notices”) to Defendants concerning
25 the exposure of California citizens to DEHP and/or DINP contained in the Products without
26 proper warning, subject to a private action to Defendants and to the California Attorney
27 General’s office and the offices of the County District attorneys and City Attorneys for each city
28 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

1 travel bags during routine use when the headset travel bags are manipulated with bare hands.
2 Concentrations of gas phase DEHP can be expected to build within the enclosed interior of the
3 headset travel bags. This gas phase DEHP can potentially be absorbed to the surface of the
4 interior contents which include foldable headphones. When handled, these items can provide an
5 indirect source of dermal transfer of DEHP to the user's hands. Although the association
6 between HMWP phthalates such as DEHP and atopic dermatitis has never been elucidated, as a
7 multitude of chemicals are present in headphones that come into contact with human skin, DEHP
8 in headphones and hearing protection aids has been reported to induce contact dermatitis. If the
9 headset travel bags are stored or transported in a carrier, DEHP that leaches from the item may
10 contaminate other articles contained within these closed spaces that are subsequently handled,
11 worn, mouthed, or ingested by the user. Finally, while mouthing of the headset travel bags does
12 not seem likely, some amount of exposure through ingestion can occur by touching the headset
13 travel bags with subsequent touching of the user's hand to mouth.

14 28. The exposures that are the subject of the Gabba Goods armband phone
15 holders/cases result from the purchase, acquisition, handling and recommended use of armband
16 phone holders/cases. Consequently, the primary route of exposure to these chemicals is through
17 dermal absorption. Users may be exposed to DINP by dermal absorption through direct skin
18 contact with the armband phone holders/cases during expected use when the armband phone
19 holders/cases are worn on the arm, grasped, or manipulated with bare hands. If the armband
20 phone holders/cases become wet due to precipitation or sweat and is handled, aqueous HMWP
21 skin permeation rates have been reported to be faster than neat HMWP permeation. DINP that
22 leaches from the armband phone holders/cases can contaminate a smart phone contained within
23 the armband phone holders/cases that are subsequently handled. When a smart phone is removed
24 from the armband phone holders/cases and used, dermal absorption of DINP is possible when the
25 user manipulates the phone or holds the cell phone against an ear. If the armband phone
26 holders/cases are stored or transported in a carrier, DINP that leaches from the armband phone
27 holders/cases may contaminate other articles contained within these closed spaces are
28 subsequently handled, worn, mouthed, or consumed. Finally, while mouthing of the armband

1 phone holders/cases does not seem likely, some amount of exposure through ingestion can occur
2 by touching the product with subsequent touching of the user's hand to mouth, through touching
3 the DINP contaminated smartphone screen after it is removed from the pocket with subsequent
4 touching of the user's hand to mouth, or if the phone surface is contaminated with DINP and
5 comes into contact with the user's mouth during use.

6 29. Plaintiffs, based on their best information and belief, avers that such exposures
7 will continue every day until clear and reasonable warnings are provided to Products purchasers
8 and users or until this known toxic chemical is removed from the Products.

9 30. Defendants have knowledge that the normal and reasonably foreseeable use of the
10 Product exposes individuals to DEHP and/or DINP, and Defendants intend that exposures to
11 DEHP and/or DINP will occur by their deliberate, non-accidental participation in the
12 manufacture, importation, distribution, sale and offering of the Products to consumers in
13 California

14 31. Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to
15 this First Amended Complaint.

16 32. 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 33. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
19 authorized to grant injunctive relief in favor of Plaintiffs and against Defendants.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs demand judgment against Defendants and request 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 Products;
- 28 C. That the court grant Plaintiffs 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: February 19, 2020

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PROOF OF SERVICE

I, Evan J. Smith, Esquire, declare:

I am over the age of 18 years and not a party to this action; my business address is 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212 and 333 E. City Avenue, Suite 510, Bala Cynwyd, PA 19004.

On February 19, 2020, I served the following document:

PLAINTIFFS' FIRST AMENDED COMPLAINT

by serving a true copy of the above-described document in the following manner:

BY FEDERAL EXPRESS OVERNIGHT DELIVERY

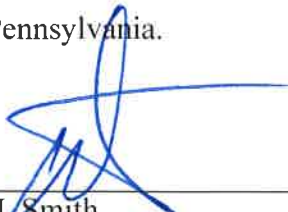
The above-described documents were transmitted via electronic mail and federal express overnight delivery to the following parties on February 19, 2020:

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Attorney for M&S Accessory Network Corp. and The TJX Companies, Inc.

I declare under penalty of perjury under the laws of California and of the United States of America that the above is true and correct.

Executed on February 19, 2020, at Bala Cynwyd, Pennsylvania.



Evan J. Smith