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ENDORSED
FILED
ALAMEDA COUNTY
AUG 27 2019

CLERK OF THE SUPERIOR COURT
By *Jame Thomas*
JAME THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

10 PRECILA BALABBO,

11 Plaintiff,

12 vs.

13 SARAH ZONE INC.,

14 Defendant.

Case No.: RG19030981

FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF

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

Judge: Jo-Lynne Q. Lee
Dept.: 18

15 Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following
16 cause of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
20 at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
21 "[n]o person in the course of doing business shall knowingly and intentionally expose any
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
23 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to diisononyl phthalate (DINP) and di(2-ethylhexyl) phthalate
27 (DEHP), toxic chemicals found in (a) IMAGE totes/bags/purses, 9012667792, KM2013,
28 118M224008, and (b) C.H. Trading bookbags, 9012664748, BA995, 118M224001, 029 sold

- 1 -

FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF --
VIOLATION OF HEALTH & SAFETY CODE §25249.5

1 and/or distributed by defendant Sarah Zone, Inc. dba Image Clothing, Inc. (“Image Clothing” or
2 “Defendant”) in California.

3 3. DINP and DEHP are harmful chemicals known to the State of California to cause
4 cancer and/or reproductive toxicity. On January 1, 1988 (DEHP), and December 20, 2013
5 (DINP), the State of California listed DEHP and DINP as chemicals known to the State to cause
6 cancer and each chemical has come under the purview of Proposition 65 regulations since that
7 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On
8 October 24, 2003, the State of California listed DEHP as a chemical known to cause
9 reproductive toxicity.

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 or threaten to violate” the statute. Health & Safety
19 Code § 25249.7.

20 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
21 California, without a requisite exposure warning, (a) IMAGE totes/bags/purses, 9012667792,
22 KM2013, I18M224008 and (b) C.H. Trading bookbags, 9012664748, BA995, 118M224001, 029
23 (the “Products”) that expose persons to DINP and/or DEHP.

24 7. Defendant’s failure to warn consumers and other individuals in California of the
25 health hazards associated with exposure to DINP and/or DINP in conjunction with the sale
26 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
27 enjoinder and civil penalties described herein.

28

1 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

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

7 **PARTIES**

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

12 11. Defendant Image Clothing, through its business, effectively manufactures,
13 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or
14 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the
15 Products for sale or use in the State of California.

16 12. Plaintiff alleges that defendant Image Clothing is a “person” in the course of
17 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

19 13. Venue is proper in the County of Alameda because one or more of the instances
20 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
21 conducted, and continues to conduct, business in the County of Alameda with respect to the
22 Products.

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

28

1 15. This Court has jurisdiction over Defendant because Defendant is either a citizen
2 of the State of California, has sufficient minimum contacts with the State of California, is
3 registered with the California Secretary of State as foreign corporations authorized to do business
4 in the State of California, and/or has otherwise purposefully availed itself 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 16. On August 20, 2018 (IMAGE purse) and on September 13, 2018 (CH Trading
9 bookbag), Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6
10 (collectively, the “Notices”) to Defendant concerning the exposure of California citizens to
11 DINP and/or DEHP contained in the Products without proper warning, subject to a private action
12 to Defendant and to the California Attorney General’s office and the offices of the County
13 District attorneys and City Attorneys for each city with a population greater than 750,000
14 persons wherein the herein violations allegedly occurred.

15 17. The Notices complied with all procedural requirements of Proposition 65
16 including the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted
17 with at least one person with relevant and appropriate expertise who reviewed relevant data
18 regarding DINP and/or DEHP exposure, and that counsel believed there was meritorious and
19 reasonable cause for a private action.

20 18. After receiving the Notices, and to Plaintiff’s best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
22 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
23 are the subject of the Notice.

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

26 **FIRST CAUSE OF ACTION**

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

28

1 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
2 this complaint as though fully set forth herein.

3 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
4 and/or retailer of the Product.

5 22. The Products contain DINP and/or DEHP, a hazardous chemical found on the
6 Proposition 65 list of chemicals known to be hazardous to human health.

7 23. The Products do not comply with the Proposition 65 warning requirements.

8 24. Plaintiff, based on her best information and belief, avers that at all relevant times
9 herein, and at least since August 20, 2018, continuing until the present, that Defendant has
10 continued to knowingly and intentionally expose California users and consumers of the Product
11 to DINP and/or DEHP without providing required warnings under Proposition 65.

12 25. The exposures that are the subject of the IMAGE purse Notice result from the
13 purchase, acquisition, handling and recommended use of the Product. Consequently, the primary
14 route of exposure to these chemicals is through dermal absorption. Dermal absorption of DINP
15 can occur through direct skin contact with the Product during routine use when the Product is
16 grasped, opened, or manipulated with bare hands. Concentrations of DINP can be expected to
17 build within the enclosed interior of the Product. This gas phase and surface DINP can
18 potentially be absorbed to the surface of the interior contents that can be subsequently handled,
19 held in direct contact with skin, mouthed, or ingested by the user. If the Product is stored or
20 transported in a carrier, DINP that leaches from the plastic may contaminate other articles
21 contained within the storage area or carrier that are subsequently handled, worn mouthed, or
22 ingested by the user. Finally, while mouthing of the Product does not seem likely, some amount
23 of exposure through ingestion can occur by handling the Product with subsequent touching of the
24 user's hand to mouth.

25 26. The exposures that are the subject of the CH Trading bookbag Notice result from
26 the purchase, acquisition, handling and recommended use of the Product. Consequently, the
27 primary route of exposure to these chemicals is through dermal absorption. Dermal absorption of
28 DEHP can occur through direct skin contact with the clear plastic during routine use when the

1 backpack is grasped, opened, or manipulated with bare hands. If the plastic becomes wet due to
2 contact with water and is handled or held in contact with wet skin, aqueous DEHP skin
3 permeation rates have been reported to be faster than neat DEHP permeation. The user's clothes
4 can absorb DEHP when the backpack is worn over the shoulders using the shoulder straps and
5 subsequently these contaminated clothes will be a source of DEHP dermal exposure.
6 Concentrations of gas phase DEHP can be expected to build within the enclosed interior of the
7 backpack. This gas phase and surface DEHP can potentially be absorbed to the surface of the
8 interior contents that can be subsequently handled, held in direct contact with skin, mouthed or
9 ingested by the user. If the backpack is stored or transported in a carrier, DEHP that leaches from
10 the clear plastic may contaminate other articles contained within the storage area or carrier that
11 are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of
12 the product does not seem likely, some amount of exposure through ingestion can occur by
13 handling the product with subsequent touching of the user's hand to mouth.

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

17 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
18 Product exposes individuals to DINP and DEHP, and Defendant intends that exposures to DINP
19 and DEHP will occur by its deliberate, non-accidental participation in the manufacture,
20 importation, distribution, sale and offering of the Products to consumers in California.

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

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

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

27 **PRAYER FOR RELIEF**

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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);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: August 27, 2019

BRODSKY & SMITH, LLC
By: 
Evan J. Smith (SBN242352)
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Beverly Hills, CA 90212
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Facsimile: (310) 247-0160

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I, Evan J. Smith, Esquire, declare:

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

5 On August 27, 2019, I served the following document:

6 **PLAINTIFF'S FIRST AMENDED COMPLAINT**

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

8 **FEDERAL EXPRESS OVERNIGHT DELIVERY**

9
10 The above-described documents were transmitted via electronic mail and federal express overnight
11 delivery to the following parties on August 27, 2019:

12 TAE H YOO
13 c/o Sarah Zone Inc.
14 2288 E 49TH ST.
VERNON CA 90058

15 *Attorneys for Defendant*

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

18 Executed on August 27, 2019. at Bala Cynwyd, Pennsylvania.

19
20 
21 _____
Evan J. Smith