

ENDORSED  
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ALAMEDA COUNTY

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF ALAMEDA

18 GABRIEL ESPINOSA,

19 Plaintiff,

20 vs.

21 DGLGROUP, LTD.,

22 Defendant.

Case No.: RG19007043

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

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

23 Plaintiffs Gabriel Espinosa ("Espinosa") and CA Citizen Protection Group, LLC  
24 ("CCPG") (collectively, "Plaintiffs"), by and through their attorneys, allege the following cause  
25 of action in the public interest of the citizens of the State of California.

26 **BACKGROUND OF THE CASE**

27 1. Plaintiffs bring this representative action on behalf of all California citizens to  
28 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.

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1           2.       This first amended complaint is a representative action brought by Plaintiffs in the  
2 public interest of the citizens of the State of California to enforce the People's right to be  
3 informed of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and  
4 diisononyl phthalate (DINP), toxic chemicals found in headphones sold and/or distributed by  
5 defendant DGL Group, Ltd. ("DGL Group" or "Defendant") in California.

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

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.       Plaintiffs allege that Defendant manufactures, distributes and/or offers for sale in  
24 California, without a requisite exposure warning, headphones (the "Products") that expose  
25 persons to DEHP and/or DINP.

26          7.       Defendant's failure to warn consumers and other individuals in California of the  
27 health hazards associated with exposure to DEHP and/or DINP in conjunction with the sale  
28

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

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

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

9 **PARTIES**

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

15 11. Plaintiff CCPG is an organization dedicated to reducing the amount of chemical  
16 toxins in consumer products, the promotion of human health, environmental safety, and  
17 improvement of worker and consumer safety. CCPG brings this action in the public interest  
18 pursuant to Health and Safety Code § 25249.7(d).

19 12. Defendant DGL Group, through its business, effectively manufactures, imports,  
20 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
21 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale  
22 or use in the State of California. Plaintiffs allege that defendant DGL Group is a “person” in the  
23 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
24 25249.11.

25 **VENUE AND JURISDICTION**

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

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

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

14 **SATISFACTION OF NOTICE REQUIREMENTS**

15 16. On November 8, 2018 (Espinosa) and November 17, 2018 (CCPG), Plaintiffs  
16 gave notice of alleged violation of Health and Safety Code § 25249.6 (collectively, the  
17 “Notices”) to Defendant concerning the exposure of California citizens to DEHP contained in the  
18 Products without proper warning, subject to a private action to Defendant and to the California  
19 Attorney General’s office and the offices of the County District attorneys and City Attorneys for  
20 each city with a population greater than 750,000 persons wherein the herein violations allegedly  
21 occurred.

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

27 18. After receiving the Notices, and to Plaintiffs’ best information and belief, none of  
28 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted

1 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which  
2 are the subject of Plaintiffs' Notices'.

3 19. Plaintiffs are commencing this action more than sixty (60) days from the date of  
4 the Notices, as required by law.

5 **FIRST CAUSE OF ACTION**

6 **(By Plaintiffs against Defendant for the Violation of Proposition 65)**

7 20. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 19 of  
8 this first amended complaint as though fully set forth herein.

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

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

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

14 24. Plaintiffs, based on their best information and belief, avers that at all relevant  
15 times herein, and at least since November 8, 2018, continuing until the present, that Defendant  
16 has continued to knowingly and intentionally expose California users and consumers of the  
17 Products to DEHP and/or DINP without providing required warnings pursuant to Proposition 65.

18 25. The exposures that are the subject of the Notices result from the purchase,  
19 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
20 exposure to these chemicals is through dermal exposure. The Products can be expected to emit  
21 gas phase DEHP/DINP into the air and accumulate DEHP/DINP at the surface of the Products  
22 over the lifetime of the Products. This gas phase DEHP/DINP can potentially be inhaled as the  
23 Products are used in the vicinity of the user's facial area. The Products are likely to be in  
24 constant contact with the user's ears during normal expected use and direct dermal exposure to  
25 DEHP/DINP can occur. Dermal exposure through direct contact with the user's hands is possible  
26 during application, removal, and manipulation of the Products. Should the wearer's skin perspire  
27 underneath Products or the Products becomes wet, aqueous DEHP skin permeation rates have  
28 been reported to be faster than neat DEHP permeation. Although the association between

1 HMWP phthalates such as DEHP and atopic dermatitis has never been elucidated, as a multitude  
2 of chemicals are present in headphones that come into contact with human skin, DEHP in  
3 headphones and hearing protection aids has been reported to induce contact dermatitis. If the  
4 Products are stored or transported in a carrier, DEHP/DINP that leaches from the Product may  
5 contaminate other articles contained within these closed spaces are subsequently handled, worn,  
6 mouthed or consumed. Finally, while mouthing of the Products does not seem likely, some  
7 amount of exposure through ingestion can occur by handling the Products with subsequent  
8 touching of the user's hand to mouth.

9         26.     Plaintiffs, based on their best information and belief, avers that such exposures  
10 will continue every day until clear and reasonable warnings are provided to purchasers and users  
11 of the Products or until these known toxic chemicals are removed from the Products.

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

16         28.     Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to  
17 this first amended complaint.

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

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

22                     **PRAYER FOR RELIEF**

23         WHEREFORE, Plaintiffs demand judgment against Defendant and requests the  
24 following relief:

- 25                     A.     That the court assess civil penalties against Defendant in the amount of  
26                                 \$2,500 per day for each violation in accordance with Health and Safety  
27                                 Code § 25249.7(b);

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

Dated: March 12, 2020

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