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ENDORSED  
FILED  
ALAMEDA COUNTY

APR 2 - 2019

CLERK OF THE SUPERIOR COURT  
By AMRIT KHAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

RG 19013200

10 EMA BELL,

11 Plaintiff,

12 vs.

13 COUSIN CORPORATION OF  
14 AMERICA,

15 Defendant.

Case No.:

COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People's right to be informed of the health  
27 hazards caused by exposure di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
28

1 Cousin tool kits/cases sold and/or distributed by defendant Cousin Corporation of America  
2 (“Cousin Corporation of America” or “Defendant”) in California.

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

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

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

19 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in  
20 California, without a requisite exposure warning, Cousin tool kits/cases (the “Products”) that  
21 expose persons to DEHP.

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

26 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
27 65 in accordance with Health and Safety Code § 25249.7(b).

28



1 registered with the California Secretary of State as foreign corporations authorized to do business  
2 in the State of California, and/or has otherwise purposefully availed itself of the California  
3 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On November 27, 2018, Plaintiff gave notice of alleged violation of Health and  
7 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California  
8 citizens to DEHP contained in the Products without proper warning, subject to a private action to  
9 Defendant and to the California Attorney General's office and the offices of the County District  
10 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
11 wherein the herein violations allegedly occurred.

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

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

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

23 **FIRST CAUSE OF ACTION**

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

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

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

1           22.     The Products contain DEHP, a hazardous chemical found on the Proposition 65  
2 list of chemicals known to be hazardous to human health.

3           23.     The Product does not comply with the Proposition 65 warning requirements.

4           24.     Plaintiff, based on her best information and belief, avers that at all relevant times  
5 herein, and at least since October 20 2018, continuing until the present, that Defendant has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DEHP without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of the Notice result from the purchase,  
9 acquisition, handling and recommended use of the Product. Consequently, the primary route of  
10 exposure to these chemicals is through dermal absorption. Users can be exposed to DEHP by  
11 dermal absorption through direct skin contact with the Product when Product is handled with  
12 bare hands. If the Product is stored or transported in a carrier, DEHP that leaches from the  
13 Product may contaminate other articles contained within these closed spaces which is then  
14 subsequently handled, worn, mouthed, or consumed. Finally, while direct mouthing of the  
15 Product does not seem likely, some amount of exposure through ingestion can occur by touching  
16 the Product with subsequent touching of the user's hand to mouth.

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

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

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

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

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