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ENDORSED
FILED
ALAMEDA COUNTY

MAR 19 2019

CLERK OF THE SUPERIOR COURT
By ALICIA ESPINOZA

8 *Attorneys for Plaintiff*

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

12 GABRIEL ESPINOSA,
13 Plaintiff,
14 vs.
15 USA MINISO DEPOT, INC.,
16 Defendant.

Case No.: **RG 19011531**

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELEIF**

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

17 Plaintiff Gabriel Espinosa ("Plaintiff"), by and through his 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 hazards caused by exposure diisononyl phthalate (DINP), a toxic chemical found in Miniso
children's swim vests - all colors sold and/or distributed by defendant USA Miniso Depot, Inc.
("USA Miniso" or "Defendant") in California.

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

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

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

15 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in
16 California, without a requisite exposure warning, Miniso children’s swim vests - all colors (the
17 “Products”) that expose persons to DINP.

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

22 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
23 65 in accordance with Health and Safety Code § 25249.7(b).

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

28 **PARTIES**

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

5 11. Defendant USA Miniso, through its business, effectively manufactures, imports,
6 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
7 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale
8 or use in the State of California.

9 12. Plaintiff alleges that defendant USA Miniso is a “person” in the course of doing
10 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

11 VENUE AND JURISDICTION

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

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

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

27 SATISFACTION OF NOTICE REQUIREMENTS

28

1 16. On January 15, 2019, Plaintiff gave notice of alleged violation of Health and
2 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California
3 citizens to DINP contained in the Products without proper warning, subject to a private action to
4 Defendant and to the California Attorney General's office and the offices of the County District
5 attorneys and City Attorneys for each city with a population greater than 750,000 persons
6 wherein the herein violations allegedly occurred.

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

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

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

18 FIRST CAUSE OF ACTION

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

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

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

24 22. The Products contain DINP, a hazardous chemical found on the Proposition 65
25 list of chemicals known to be hazardous to human health.

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

27 24. Plaintiff, based on his best information and belief, avers that at all relevant times
28 herein, and at least since December 9, 2018, continuing until the present, that Defendant has

1 continued to knowingly and intentionally expose California users and consumers of the Product
2 to DINP without providing required warnings under Proposition 65.

3 25. The exposures that are the subject of this notice result from the purchase,
4 acquisition, handling and recommended use of the Product for children ages 3 and up.
5 Consequently, the primary route of exposure to these chemicals is through dermal absorption.
6 The Product can be expected to emit gas phase DINP into the air over and accumulate DINP at
7 the surface of the item over the lifetime of the product. When the Product is used as intended,
8 dermal exposure is possible through exposed areas of skin that are in contact with the Product.
9 Additionally, dermal exposure through the user's hand can occur during routine handling of the
10 Product. Should the Product come into contact with water or come into contact with body parts,
11 as may be expected during normal, intended use, aqueous HMWP skin permeation rates have
12 been reported to be faster than neat HMWP permeation. The Product can be expected to leach
13 DINP into pool water over the lifetime of the product. This DINP contaminated water can
14 subsequently be absorbed through the skin. For instance, exposure to low molecular weight
15 phthalates was reported in urinary metabolites after male showering. Direct ingestion of DINP
16 will occur through mouthing of the Product during inflation of the swim vest. Finally, some
17 amount of exposure through ingestion can occur by handling the Product with subsequent
18 touching of the user's hand to mouth or through ingestion of DINP contaminated pool water.

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

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

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

28

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

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

5 **PRAYER FOR RELIEF**

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

- 8 A. That the court assess civil penalties against Defendant in the amount of
- 9 \$2,500 per day for each violation in accordance with Health and Safety
- 10 Code § 25249.7(b);
- 11 B. That the court preliminarily and permanently enjoin Defendant mandating
- 12 Proposition 65 compliant warnings on the Product;
- 13 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 14 D. That the court grant any further relief as may be just and proper.

15 Dated: March 19, 2019

16 BRODSKY & SMITH, LLC

17 By:  _____

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