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ENDORSED
FILED
ALAMEDA COUNTY

FEB 20 2020

CLERK OF THE SUPERIOR COURT
By DEBRA FURTADO
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

9
10 GABRIEL ESPINOZA,
11 Plaintiff,
12 vs.
13 MUJI U.S.A. LIMITED,
14 Defendant.

Case No.: **RG20055276**

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

15 Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the
16 following 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 di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in 5
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1 piece stationary sets/kits sold and/or distributed by defendant Muji U.S.A. Limited (“Muji
2 U.S.A.” 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, 5 piece stationary sets/kits (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).

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1 in the State of California, and/or has otherwise purposefully availed itself of the California
2 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On July 30, 2019, Plaintiff gave notice of alleged violation of Health and Safety
6 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to
7 DEHP contained in the Products without proper warning, subject to a private action to Defendant
8 and to the California Attorney General’s office and the offices of the County District attorneys
9 and City Attorneys for each city with a population greater than 750,000 persons wherein the
10 herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

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. Products do not comply with the Proposition 65 warning requirements.

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since July 30, 2019, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Products
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 Products. Consequently, the primary route of
10 exposure to these chemicals is through dermal absorption. Users may be exposed to DEHP by
11 dermal absorption through direct skin contact with the Products when they are handled.
12 Concentrations of gas phase DEHP can be expected to build within the zippered interior of the
13 Products. Items placed in the Products, including but not limited to the manufacturer's paper and
14 pens, can absorb DEHP and these items can be subsequently handled, held in direct contact with
15 skin, mouthed, or ingested. If the Products are stored or transported in a carrier, DEHP that
16 leaches from the Products may contaminate other articles contained within these closed spaces
17 that are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing
18 of the Products does not seem likely, some amount of exposure through ingestion can occur by
19 touching the Products with subsequent touching of the user's hand to mouth or if DEHP
20 contaminated items due to contact with the Products are mouthed.

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

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

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