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9 Attorneys for Plaintiff,
 10 CONSUMER ADVOCACY GROUP, INC.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 CONSUMER ADVOCACY GROUP, INC.,
 14 in the public interest,

15 Plaintiff,

16 v.

17 USA MINISO DEPOT, INC., a Delaware
 18 Corporation;
 19 MINISO DEPOT CA, INC., a California
 20 Corporation;
 21 and DOES 1-20;

22 Defendants.

23 CASE NO. **20STCV45524**

24 COMPLAINT FOR PENALTY AND
 25 INJUNCTION

26 Violation of Proposition 65, the Safe
 27 Drinking Water and Toxic Enforcement
 28 Act of 1986 (*Health & Safety Code*, §
 25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
 CASE (exceeds \$25,000)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action against
 Defendants USA MINISO DEPOT, INC., MINISO DEPOT CA, INC., and DOES 1-20 as
 follows:

THE PARTIES

- 1
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
3 organization qualified to do business in the State of California. CAG is a person within
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
5 as a private attorney general, brings this action in the public interest as defined under
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant USA MINISO DEPOT, INC. (“USA MINISO”) is a Delaware Corporation,
8 qualified to do business in Delaware, doing business in the State of California at all
9 relevant times herein.
- 10 3. Defendant MINISO DEPOT CA, INC. (“MINISO CA”) is a California Corporation,
11 qualified to do business in California, and doing business in the State of California at all
12 relevant times herein.
- 13 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
15 complaint to allege their true names and capacities when ascertained. Plaintiff is
16 informed, believes, and thereon alleges that each fictitiously named defendant is
17 responsible in some manner for the occurrences herein alleged and the damages caused
18 thereby.
- 19 5. At all times mentioned herein, the term “Defendants” includes USA MINISO, MINISO
20 CA, and DOES 1-20.
- 21 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
24 including DOES 1-20, was an agent, servant, or employee of each of the other
25 Defendants. In conducting the activities alleged in this Complaint, each of the
26 Defendants was acting within the course and scope of this agency, service, or
27 employment, and was acting with the consent, permission, and authorization of each of
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1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing agents.
3 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
4 wrongful conduct of each of the other Defendants.

- 5 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
6 Defendants was a person doing business within the meaning of Health and Safety Code
7 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
8 employees at all relevant times.

9 **JURISDICTION**

- 10 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
12 those given by statute to other trial courts. This Court has jurisdiction over this action
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
14 violations of Proposition 65 in any Court of competent jurisdiction.

- 15 10. This Court has jurisdiction over Defendants named herein because Defendants either
16 reside or are located in this State or are foreign corporations authorized to do business in
17 California, are registered with the California Secretary of State, or who do sufficient
18 business in California, have sufficient minimum contacts with California, or otherwise
19 intentionally avail themselves of the markets within California through their manufacture,
20 distribution, promotion, marketing, or sale of their products within California to render
21 the exercise of jurisdiction by the California courts permissible under traditional notions
22 of fair play and substantial justice.

- 23 11. Venue is proper in the County of Los Angeles because one or more of the instances of
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
25 because Defendants conducted, and continue to conduct, business in the County of Los
26 Angeles with respect to the consumer products that are the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

2 12. In 1986, California voters approved an initiative to address growing concerns about
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
8 from contamination, to allow consumers to make informed choices about the products
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see
10 fit.

11 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
12 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
13 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
14 chemicals and chemical families. Proposition 65 imposes warning requirements and
15 other controls that apply to Proposition 65-listed chemicals.

16 14. All businesses with ten (10) or more employees that operate or sell products in California
17 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
19 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and
20 reasonable” warnings before exposing a person, knowingly and intentionally, to a
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

22 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
24 "Threaten to violate" means "to create a condition in which there is a substantial
25 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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1 16. Plaintiff identified certain practices of manufacturers and distributors of exposing,
2 knowingly and intentionally, persons in California to Proposition 65-listed chemicals via
3 consumer products without first providing clear and reasonable warnings of such to the
4 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants
5 engaged in such practices.

6 17. On January 1, 1988, the Governor of California added Di(2-ethylhexyl)phthalate
7 (“DEHP”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
8 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
9 twenty (20) months after addition of DEHP to the list of chemicals known to the State to
10 cause cancer, DEHP became fully subject to Proposition 65 warning requirements and
11 discharge prohibitions.

12 18. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
13 known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit.
14 27, § 27001(c)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
15 twenty (20) months after addition of DEHP to the list of chemicals known to the State to
16 cause reproductive and developmental toxicity, DEHP became fully subject to
17 Proposition 65 warning requirements and discharge prohibitions.

18 **SATISFACTION OF PRIOR NOTICE**

19 19. On or about May 11, 2020, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures, subject to a
21 private action to USA MINISO, MINISO CA, and to the California Attorney General,
22 County District Attorneys, and City Attorneys for each city containing a population of at
23 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
24 Sports Armband for Cellphone.

25 20. On or about May 14, 2020, Plaintiff gave notice of alleged violations of Health and
26 Safety Code section 25249.6, concerning consumer products exposures, subject to a
27 private action to USA MINISO and to the California Attorney General, County District
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1 Attorneys, and City Attorneys for each city containing a population of at least 750,000
2 people in whose jurisdictions the violations allegedly occurred, concerning Sports
3 Armband with Plastic Components.

4 21. Before sending the notices of alleged violation, Plaintiff investigated the consumer
5 products involved, the likelihood that such products would cause users to suffer
6 significant exposures to DEHP and the corporate structure of each of the Defendants.

7 22. Plaintiff's notices of alleged violation included a Certificates of Merit executed by the
8 attorney for the noticing party, CAG. The Certificates of Merit stated that the attorney for
9 Plaintiff who executed the certificates had consulted with at least one person with
10 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,
11 the subject Proposition 65-listed chemical of this action. Based on that information, the
12 attorney for Plaintiff who executed the Certificates of Merit believed there was a
13 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
14 to the Certificates of Merit served on the Attorney General the confidential factual
15 information sufficient to establish the basis of the Certificates of Merit.

16 23. Plaintiff's notices of alleged violations also included Certificates of Service and a
17 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
18 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

19 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
20 gave notices of the alleged violations to USA MINISO, MINISO CA, and the public
21 prosecutors referenced in Paragraphs 19-20.

22 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
23 any applicable district attorney or city attorney has commenced and is diligently
24 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against USA MINISO, MINISO**
3 **CA, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and**
4 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Cellphone Accessories**

6 26. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 25 of this complaint as though fully set forth herein.

8 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Sports Armband for Cellphone, including but not
10 limited to: “Miniso Sports Armband for Cellphone”; “5.5 inches Sports Armband for
11 Cellphone (Blue)”; “Net Weight: 46.8 x 15.4 cm”; “Outdoors Sports Mobile phone
12 Armband 5.5 Inches”; “Miniso Japan”; “UPC 4 517895 093124”; Designed by
13 Japan/Made in China” (“Sports Armbands”).

14 28. Sports Armbands contain DEHP.

15 29. Defendants knew or should have known that DEHP has been identified by the State of
16 California as a chemical known to cause cancer and toxicity and therefore was subject to
17 Proposition 65 warning requirements. Defendants were also informed of the presence of
18 DEHP in Sports Armbands within Plaintiff’s notice of alleged violations further discussed
19 above at Paragraph 19.

20 30. Plaintiff’s allegations regarding Sports Armbands concerns “[c]onsumer products
21 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
23 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
24 *25602(b)*. Sports Armbands are consumer products, and, as mentioned herein, exposures
25 to DEHP took place as a result of such normal and foreseeable use.

26 31. Plaintiff is informed, believes, and thereon alleges that between May 11, 2017 and the
27 present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Sports Armbands, which Defendants manufactured, distributed,
or sold as mentioned above, to DEHP, without first providing any type of clear and

1 reasonable warning of such to the exposed persons before the time of exposure.

2 Defendants have distributed and sold Sports Armbands in California. Defendants know
3 and intend that California consumers will use Sports Armbands, thereby exposing them
4 to DEHP. Defendants thereby violated Proposition 65.

5 32. The principal routes of exposure are through dermal contact and ingestion. Persons
6 sustain exposures by using, handling, or carrying Sports Armbands without wearing
7 gloves or by touching bare skin or mucous membranes with or without gloves after
8 handling Sports Armbands, as well as through direct and indirect hand to mouth contact,
9 hand to mucous membrane, trans-dermal absorption, or breathing in particulate matter
10 emanating from Sports Armbands during use, as well as through environmental mediums
11 that carry the DEHP once contained within the Sports Armbands.

12 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
13 Proposition 65 as to Sports Armbands have been ongoing and continuous, as Defendants
14 engaged and continue to engage in conduct which violates Health and Safety Code
15 section 25249.6, including the manufacture, distribution, promotion, and sale of Sports
16 Armbands, so that a separate and distinct violation of Proposition 65 occurred each and
17 every time a person was exposed to DEHP by Sports Armbands as mentioned herein.

18 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
20 violations alleged herein will continue to occur into the future.

21 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to DEHP from Sports Armbands, pursuant to
23 Health and Safety Code section 25249.7(b).

24 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
25 filing this Complaint.
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1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against USA MINISO and**
3 **DOES 11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Fitness Accessories**

6 37. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 36 of this complaint as though fully set forth herein.

8 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Sports Armband with Plastic Components, including
10 but not limited to “MINISO;” “Light & Comfortable Sports Armband for Cellphone;”
11 “SPORTS ARMBAND;” “Directed by Japanese company;” “5.5 inches;” “manufactured
12 for: Miniso Industries Co., Ltd.,” “Distributed by: Miniso International Co., Ltd.,”
13 “Distributed by: USA Miniso Depot, Inc.,” “Designed by Japan. Made in China;”
14 “www.miniso.jp;” “MINISO INDUSTRIES CO., LTD. GINZA KYOYA BLDG. 7F 3-
15 10-7 GINZA, CHUO-KU, TOKYO 104-0061, JAPAN;” “4 517985 093315;” (“Sports
16 Armbands II”).

17 39. Sports Armbands II contain DEHP.

18 40. Defendants knew or should have known that DEHP has been identified by the State of
19 California as a chemical known to cause cancer and toxicity and therefore was subject to
20 Proposition 65 warning requirements. Defendants were also informed of the presence of
21 DEHP in Sports Armbands II within Plaintiff’s notice of alleged violations further
22 discussed above at Paragraph 20.

23 41. Plaintiff’s allegations regarding Sports Armbands II concerns “[c]onsumer products
24 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
27 *25602(b)*. Sports Armbands II are consumer products, and, as mentioned herein,
28 exposures to DEHP took place as a result of such normal and foreseeable use.

- 1 42. Plaintiff is informed, believes, and thereon alleges that between May 14, 2017 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Sports Armbands II, which Defendants manufactured,
4 distributed, or sold as mentioned above, to DEHP, without first providing any type of
5 clear and reasonable warning of such to the exposed persons before the time of exposure.
6 Defendants have distributed and sold Sports Armbands II in California. Defendants
7 know and intend that California consumers will use Sports Armbands II, thereby
8 exposing them to DEHP. Defendants thereby violated Proposition 65.
- 9 43. The principal routes of exposure are through dermal contact and ingestion. Persons
10 sustain exposures by using, handling, or carrying Sports Armbands II without wearing
11 gloves or by touching bare skin or mucous membranes with or without gloves after
12 handling Sports Armbands II, as well as through direct and indirect hand to mouth
13 contact, hand to mucous membrane, trans-dermal absorption, or breathing in particulate
14 matter emanating from Sports Armbands II during use, as well as through environmental
15 mediums that carry the DEHP once contained within the Sports Armbands II.
- 16 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
17 Proposition 65 as to Sports Armbands II have been ongoing and continuous, as
18 Defendants engaged and continue to engage in conduct which violates Health and Safety
19 Code section 25249.6, including the manufacture, distribution, promotion, and sale of
20 Sports Armbands II, so that a separate and distinct violation of Proposition 65 occurred
21 each and every time a person was exposed to DEHP by Sports Armbands II as mentioned
22 herein.
- 23 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
25 violations alleged herein will continue to occur into the future.
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1 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to DEHP from Sports Armbands II, pursuant
3 to Health and Safety Code section 25249.7(b).

4 47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

- 8 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 9 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 10 3. Costs of suit;
- 11 4. Reasonable attorney fees and costs; and
- 12 5. Any further relief that the court may deem just and equitable.

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15 Dated: November 30, 2020

YEROUSHALMI & YEROUSHALMI

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17 BY: 

18 Reuben Yeroushalmi
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.