

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 26 2017

CLERK OF THE SUPERIOR COURT
By *[Signature]*
JANIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 EMA BELL,
12 Plaintiff,
13 v.
14 INSTYLE PRODUCTS, LLC,
15 Defendant.

Case No.: **RG17880144**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

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

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

BY FAX

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
2 Instyle cosmetic bags manufactured, sold and/or distributed in California by defendant Instyle
3 Products, LLC (“Instyle” or “Defendant”) in California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer. On
5 December 20, 2013, the State of California listed DEHP as a chemical known to the State to
6 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
7 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On
8 October 24, 2003, the State of California listed DEHP as a chemical known to cause
9 reproductive toxicity. *Id.*

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

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

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
21 and/or offers for sale in California, without the required warning, Instyle cosmetic bags,
22 including but not limited to Instyle the Bumpbag, UPC No. 818665011282 (“Product” or
23 “Products”), that contain DEHP.

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

28

1 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
4 Defendant to provide purchasers or users of the Product with the required warnings related to the
5 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
6 Code § 25249.7(a).

7 **PARTIES**

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

12 11. Defendant, through its business, effectively manufactures, imports, distributes,
13 sells, and/or offers the Products for sale or use in the State of California, or it implies by its
14 conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use
15 in the State of California.

16 12. Defendant Instyle is a “person” in the course of doing business within the
17 meaning of Health & Safety Code sections 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

19 13. Venue is proper in the County of Alameda because one or more of the instances
20 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
21 conducted, and continues to conduct, business in the County of Alameda with respect to the
22 Product.

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

28

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

7 **SATISFACTION OF NOTICE REQUIREMENTS**

8 16. On July 12, 2017, Plaintiff gave notice of alleged violation of Health and Safety
9 Code § 25249.6 (the “Notice”) to Instyle concerning the exposure of California citizens to DEHP
10 contained in the Product without proper warning, subject to a private action to Instyle and to the
11 California Attorney General’s office and the offices of the County District attorneys and City
12 Attorneys for each city with a population greater than 750,000 persons wherein the herein
13 violations allegedly occurred.

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

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

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

25 **FIRST CAUSE OF ACTION**

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

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

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

3 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65
4 list of chemicals known to be hazardous to human health.

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

6 24. Plaintiff, based on her best information and belief, avers that at all relevant times
7 herein, and at least since May 31, 2017, continuing until the present, that Instyle has continued to
8 knowingly and intentionally expose California users and consumers of the Product to DEHP
9 without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of the Notice result from the purchase,
11 acquisition, handling and recommended use of the product. Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can
13 occur through direct skin contact with the clear plastic of the bag during routine use when the bag
14 is grasped, opened, or manipulated with bare hands. The product can be expected to emit gas
15 phase DEHP into the air and accumulate DEHP at the surface over the lifetime of the product.
16 Concentrations of gas phase DEHP can be expected to build within the small, enclosed interior
17 of the bag. This gas phase and surface DEHP can potentially be absorbed to the surface of the
18 interior contents of the pouch that are subsequently handled, held in direct contact with skin,
19 mouthed, or ingested by the user. The Instyle Clear for Take Off Bump Bag includes an interior
20 cosmetic bag. DEHP from the clear plastic of this cosmetic bag can contaminate makeup that is
21 applied to the users face. If the bag is stored or transported in a carrier, DEHP that leaches from
22 the clear plastic may contaminate other articles contained within the storage area or carrier that are
23 subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthed, the
24 product does not seem likely, some amount of exposure through ingestion can occur by touching
25 the product with subsequent touching of the user's hand to mouth. some amount of exposure
26 through ingestion can occur by touching the product with subsequent touching of the user's hand
27 to mouth.

28

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

4 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
6 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
7 sale and offering of the Product to consumers in California

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

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

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


14 **PRAYER FOR RELIEF**

15
16 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
17 following relief:

- 18 A. That the court assess civil penalties against Defendant in the amount of
19 \$2,500 per day for each violation in accordance with Health and Safety
20 Code § 25249.7(b);
- 21 B. That the court preliminarily and permanently enjoin Defendant mandating
22 Proposition 65 compliant warnings on the Product;
- 23 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 24 D. That the court grant any further relief as may be just and proper.

25
26 Dated: October 25, 2017

BRODSKY & SMITH, LLC

27 By: 
28 Evan J. Smith (SBN 242352)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff