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**ENDORSED  
FILED  
ALAMEDA COUNTY**

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CLERK OF THE SUPERIOR COURT

By CURTIYAH GANTER

Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

v.

THE BEAUTY COLLECTIVE, LLC,

Defendant.

Case No.:

RG17882217

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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

**BACKGROUND OF THE CASE**

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

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

1 cosmetic bags/travel cases that are manufactured, sold and/or distributed in California by  
2 defendant The Beauty Collective, LLC. ("The Beauty Collective" 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 cause cancer and DEHP has come under the purview of Proposition 65 regulations  
6 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
7 25249.10(b). On October 24, 2003, the state of California listed DEHP as a chemical known to  
8 adverse developmental and reproductive effects. *Id.*

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[s] or threaten[s] to violate" the statute. Health &  
18 Safety Code § 25249.7.

19 6. Plaintiff alleges that Defendant manufactures, distributes, imports, sells, and/or  
20 offers for sale in California, without the required warning, cosmetic bags and/or travel cases/bags  
21 ("Product" or "Products"), that contain 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, manufacture,  
24 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the  
25 injunction and 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           9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
2 Defendant to provide purchasers or users of the Product with the required warnings related to the  
3 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety  
4 Code § 25249.7(a).

**PARTIES**

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

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

14           12. Plaintiff alleges that Defendant The Beauty Collective is a “person” in the course  
15 of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

### VENUE AND JURISDICTION

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

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

15. This Court has jurisdiction over Defendant because it is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the

1 State of California, and/or has otherwise purposefully availed itself of the California market.  
2 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 August 17, 2017, Plaintiff gave notice of alleged violation of Health and  
6 Safety Code § 25249.6 (the "Notice") to The Beauty Collective concerning the exposure of  
7 California citizens to DEHP contained in the Product without proper warning, subject to a  
8 private action to The Beauty Collective and to the California Attorney General's office and the  
9 offices of the County District attorneys and City Attorneys for each city with a population  
10 greater than 750,000 persons wherein the 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 The Beauty Collective under Proposition 65 to enforce the alleged  
19 violations which are the subject of Plaintiff's notice of violation.

20 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
21 Notice to The Beauty Collective, 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 Product.

1           22.     The Product contains 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 his best information and belief, avers that at all relevant times  
5 herein, and at least since June 22, 2017, continuing until the present, that The Beauty Collective  
6 has continued to knowingly and intentionally expose California users and consumers of the  
7 Product 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 may potentially be exposed to  
11 DEHP by dermal absorption through direct skin contact with the clear window during routine use  
12 when the bag is manipulated with bare hands. The product can be expected to emit gas phase  
13 DEHP into the air and accumulate DEHP at the surface over the lifetime of the product.  
14 Concentrations of gas phase DEHP can be expected to build within the small, enclosed interior  
15 of the cosmetic bag. This gas phase DEHP can potentially be absorbed to the surface of the  
16 interior contents which can include makeup and toiletries. When handled, these items can  
17 provide an indirect source of dermal transfer of DEHP to the user's hands when the contents are  
18 grasped with bare hands. Contaminated makeup brushes can also provide an indirect source of  
19 dermal transfer of DEHP to the user's facial area when the brush hairs contact the user's facial  
20 area and contaminated makeup particles are applied to the user's facial skin, Should the user  
21 manipulate the makeup bag or contaminated inner contents with wet hands, or the makeup bag or  
22 its contents become wet, aqueous DEHP skin permeation rates are faster than neat DEHP  
23 permeation. If the cosmetic bag is stored or transported in a carrier, DEHP that leaches from the  
24 item may contaminate other articles contained within these closed spaces that are subsequently  
25 handled, worn, or ingested by the user. Finally, while mouthing of the product does not seem  
26 likely, some amount of exposure through ingestion can occur by touching the product with  
27 subsequent touching of the user's hand to mouth, if the contaminated contents come into contact  
28

1 with the user's mouth, or if DEHP contaminated cosmetics and toiletries are applied to the lips or  
2 placed in the mouth as a result of DEHP that has leached from the cosmetic bag.

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

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

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

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

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

16 **PRAYER FOR RELIEF**

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

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

26 Dated: November 13, 2017

BRODSKY & SMITH, LLC

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