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8 *Attorneys for Plaintiff*

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JAN 25 2018

CLERK OF THE SUPERIOR COURT  
By TANIA PIERCE Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 EMA BELL,  
11 Plaintiff,  
12 ✓ vs. ~~1024~~  
13 BELLA CITA BAGS, LLC,  
14 Defendant.

Case No.: **RG18090595M**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

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

**BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest  
28 of the citizens of the State of California to enforce the People's right to be informed of the health

BY FAX

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

BELLA VITA BAGS, LLC,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

EMA BELL,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

(El nombre y dirección de la corte es:)

Superior Court of California - Alameda County  
1225 Fallon Street, Oakland, California 94612

CASE NUMBER:  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Evan J. Smith (SBN 242352), Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212 (877) 354-2590/ (310) 247-0160

DATE:  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):
- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):
4.  by personal delivery on (date):

[SEAL]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Evan J. Smith (SBN242352) Brodsky & Smith, LLC 9595 Wilshire Blvd., Suite 900 Beverly Hills, CA 90212 TELEPHONE NO: 877-534-2590      FAX NO: 310-247-0160 ATTORNEY FOR (Name): <b>EMA BELL</b>	<b>FOR COURT USE ONLY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>ALAMEDA</b> STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland California 94612 BRANCH NAME:	
CASE NAME: <b>EMA BELL v BELLA VITA BAGS, LLC</b>	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER:  JUDGE:  DEPT:

Items 1-6 below must be completed (see instructions on page 2).


1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): 1
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 24, 2018  
Evan J. Smith (SBN 242352)

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

## Employment

- Wrongful Termination (36)
- Other Employment (15)

## Contract

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
  - Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
  - Negligent Breach of Contract/Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

## Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
  - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

- Enforcement of Judgment (20)
- Abstract of Judgment (Out of County)
- Confession of Judgment (*non-domestic relations*)
- Sister State Judgment
- Administrative Agency Award (*not unpaid taxes*)
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
- Other Civil Petition

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: Bell v. Bell & Associates LLC Case Number: \_\_\_\_\_

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)		<input type="checkbox"/> Hayward Hall of Justice (447)	
<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)			
Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34	Auto tort (G)
Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no			
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75	Asbestos (D)
	Product liability (24)	<input type="checkbox"/> 89	Product liability (not asbestos or toxic tort/environmental) (G)
	Medical malpractice (45)	<input type="checkbox"/> 97	Medical malpractice (G)
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33	Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79	Bus tort / unfair bus. practice (G)
	Civil rights (08)	<input type="checkbox"/> 80	Civil rights (G)
	Defamation (13)	<input type="checkbox"/> 84	Defamation (G)
	Fraud (16)	<input type="checkbox"/> 24	Fraud (G)
	Intellectual property (19)	<input type="checkbox"/> 87	Intellectual property (G)
	Professional negligence (25)	<input type="checkbox"/> 59	Professional negligence - non-medical (G)
Employment	Wrongful termination (36)	<input type="checkbox"/> 03	Other non-PI/PD/WD tort (G)
	Other employment (15)	<input type="checkbox"/> 38	Wrongful termination (G)
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 85	Other employment (G)
	Collections (09)	<input type="checkbox"/> 53	Labor comm award confirmation
	Insurance coverage (18)	<input type="checkbox"/> 54	Notice of appeal - L.C.A.
	Other contract (37)	<input type="checkbox"/> 04	Breach contract / Wrnty (G)
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 81	Collections (G)
	Wrongful eviction (33)	<input type="checkbox"/> 86	Ins. coverage - non-complex (G)
	Other real property (26)	<input type="checkbox"/> 98	Other contract (G)
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 18	Eminent domain / Inv Cdm (G)
	Residential (32)	<input type="checkbox"/> 17	Wrongful eviction (G)
	Drugs (38)	<input type="checkbox"/> 36	Other real property (G)
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 94	Unlawful Detainer - commercial
	Petition re: arbitration award (11)	<input type="checkbox"/> 47	Unlawful Detainer - residential
	Writ of Mandate (02)	<input type="checkbox"/> 21	Unlawful detainer - drugs
	Other judicial review (39)	<input type="checkbox"/> 41	Asset forfeiture
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 62	Pet. re: arbitration award
	Construction defect (10)	<input type="checkbox"/> 49	Writ of mandate
	Claims involving mass tort (40)	<input type="checkbox"/> 64	Other judicial review
	Securities litigation (28)	<input type="checkbox"/> 77	Antitrust / Trade regulation
	Toxic tort / Environmental (30)	<input type="checkbox"/> 82	Construction defect
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 78	Claims involving mass tort
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 91	Securities litigation
		<input type="checkbox"/> 93	Toxic tort / Environmental
Misc Complaint	RICO (27)	<input type="checkbox"/> 95	Ins covrg from complex case type
	Partnership / Corp. governance (21)	<input type="checkbox"/> 19	Enforcement of judgment
	Other complaint (42)	<input type="checkbox"/> 08	Confession of judgment
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 90	RICO (G)
		<input type="checkbox"/> 88	Partnership / Corp. governance (G)
		<input type="checkbox"/> 68	All other complaints (G)
		<input type="checkbox"/> 06	Change of name
		<input type="checkbox"/> 69	Other petition

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

5 *Attorneys for Plaintiff*

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9

10 EMA BELL,  
11 Plaintiff,  
12 vs.  
13 BELLA CITA BAGS, LLC,  
14 Defendant.

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

15  
16  
17  
18 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause  
19 of action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest  
28 of the citizens of the State of California to enforce the People’s right to be informed of the health

1 hazards caused by exposure Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in Chill  
2 It Wine Bags sold and/or distributed by defendant Bella Vita Bags, LLC (“Bella Vita” or  
3 “Defendant”) in California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
5 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
6 known to the State to cause cancer and it has come under the purview of Proposition 65  
7 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
8 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
9 known to cause 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 or threaten to violate” the statute. Health & Safety  
19 Code § 25249.7.

20 6. Plaintiff alleges that Defendant manufactures, distributes, sells and/or offers for  
21 sale in California, without the requisite exposure warning, Chill It Wine Bags (the “Products”)  
22 that expose persons to DEHP.

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

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
2 Defendant to provide purchasers or users of the Products with 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).

5 **PARTIES**

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

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

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

16 **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 Products.

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

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



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 September 14, 2017, Plaintiff gave notice of alleged violation of Health and  
6 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California  
7 citizens to DEHP contained in the Products without proper warning, subject to a private action to  
8 Defendant and to the California Attorney General’s office and the offices of the County District  
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
10 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 Defendant under Proposition 65 to enforce the alleged violations which  
19 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 his  
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 Product.

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

4           24.     Plaintiff, based on her best information and belief, avers that at all relevant times  
5 herein, and at least since August 5, 2017, continuing until the present, that Defendant has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DEHP without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of this 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. The product can be expected to emit  
11 gas phase DEHP into the air and accumulate DEHP at the surface over the lifetime of the  
12 product. Dermal absorption of DEHP can occur through direct skin contact with the yellow  
13 plastic when the beverage bag is grasped or manipulated with bare hands. If the bag becomes  
14 wet with water or condensation from the freezer and is handled, aqueous DEHP skin permeation  
15 rates have been reported to be faster than neat DEHP permeation. DEHP that leaches from the  
16 bag may contaminate other articles contained within the interior volume of the bag that are  
17 subsequently handled, mouthed, or consumed by the user. DEHP that leaches from the outside  
18 of the bag may contaminate other articles in the freezer that it is held in contact with that are  
19 subsequently handled, mouthed, or consumed by the user. If the beverage bag is stored or  
20 transported in a carrier, DEHP that leaches from the beverage bag may contaminate other articles  
21 contained within the carrier bag that are subsequently handled, worn, or consumed by the user.  
22 Finally, while mouthing of the beverage bag does not seem likely, some amount of exposure  
23 through ingestion can occur by touching the product with subsequent touching of the user's hand  
24 to mouth, or through mouthing items that have been contaminated as a result of storage within or  
25 contact with the beverage bag.

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

