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ALAMEDA COUNTY

August 27, 2019

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

HG19032760**NICHOLAS & TOMASEVIC, LLP**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF ALAMEDA**

KIM EMBRY, an individual

Plaintiff,

v.

PRYM CONSUMER USA, INC. dba DRITZ,
a South Carolina corporation; JO-ANN
STORES, LLC., an Ohio limited liability
company, and DOES 1 through 100,
inclusive,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

I. INTRODUCTION

1
2 1. This Complaint is a representative action brought by Plaintiff in the public interest of
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the
4 presence of Di(2-ethylhexyl)phthalate (“DEHP”), found in Sewing Machine Cover-15”X8-3/4”X6”
5 Frosted Vinyl (“Products”) manufactured, imported, sold, or distributed for sale in California by
6 Defendants.

7 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
8 Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
9 business shall knowingly and intentionally expose any individual to a chemical known to the state to
10 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
11 individual. . . .” (Cal. Health & Safety Code § 25249.6.)

12 3. California identified and listed DEHP as a chemical known to cause reproductive
13 hazards on January 1, 1988.

14 4. The Products manufactured, imported, sold, or distributed in California contains
15 prohibited levels of DEHP.

16 5. Defendants failed to sufficiently warn consumers and individuals in California about
17 potential exposure to DEHP in connection with Defendants’ manufacture, import, sale, or distribution
18 of Products. This is a violation of Proposition 65.

19 6. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
20 in California before exposing them to DEHP in Products or other products containing DEHP pursuant
21 to Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also
22 seeks civil penalties against Defendant for its violations of Proposition 65. (Cal. Health & Safety Code
23 § 25249.7(b).)

II. PARTIES

24
25 7. Plaintiff KIM EMBRY is a citizen of the State of California dedicated to protecting the
26 health of California citizens through the elimination or reduction of toxic exposure from consumer
27 products. She brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.
28

8. Defendant PRYM CONSUMER USA, INC. dba DRITZ, is a corporation organized and existing under the laws of South Carolina. Defendant does business in California within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California, including the County of Alameda.

9. Defendant JO-ANN STORES, LLC, is a corporation organized and existing under the laws of Ohio. Defendant does business in California within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California, including the County of Alameda.

10. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff. Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

III. VENUE AND JURISDICTION

11. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.

12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendant conducted and continues to conduct business in this County as it relates to Products.

13. Defendants have sufficient minimum contacts in the State of California or otherwise purposefully avails themselves of the California market. Exercising jurisdiction over Defendants would be consistent with traditional notions of fair play and substantial justice.

1 **IV. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **(Violation of Proposition 65)**

4 14. Plaintiff incorporates by reference each and every allegation contained above.

5 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that
6 cause cancer, birth defects, and other reproductive harm.

7 16. Defendants manufactured, imported, sold, and/or distributed Products containing DEHP
8 in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed and
9 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to
10 occur into the future.

11 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
12 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
13 to DEHP through reasonably foreseeable use of the Products.

14 18. The presence of DEHP in Products exposes individuals through dermal absorption,
15 ingestion and inhalation.

16 19. Defendants knew or should have known that the Products contained DEHP and exposed
17 individuals to DEHP in the ways provided above. The Notice informed Defendants of the presence of
18 DEHP in the Products. Likewise, media coverage concerning DEHP and related chemicals in consumer
19 products, provided constructive notice to Defendants. By manufacturing, importing, distributing,
20 and/or selling Products in California, Defendants should know that the Products contain DEHP and
21 that individuals who come into contact with Products will be exposed to DEHP.

22 20. Defendants' actions in this regard were deliberate and not accidental.

23 21. On July 2, 2018, Plaintiff provided Defendants a 60-Day Notice of Violation ("Notice")
24 as required by and in compliance with Proposition 65. The Notice was provided to the various required
25 public enforcement agencies and contained a certificate of merit. The Notice alleged that Defendants
26 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
27 associated with exposures to DEHP contained in the Products.
28

22. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendants.

23. Individuals exposed to DEHP contained in the Products resulting from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also appropriate pursuant to Health & Safety Code Section 25249.7(a).

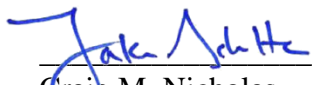
PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. Civil penalties in the amount of \$2,500 per day for each violation;
2. A preliminary and permanent injunction against Defendants from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;
3. Reasonable attorney's fees and costs of suit; and
4. Such other and further relief as may be just and proper.

Dated: August 27, 2019

NICHOLAS & TOMASEVIC, LLP

By: 
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Jake W. Schulte

Attorneys for Plaintiff