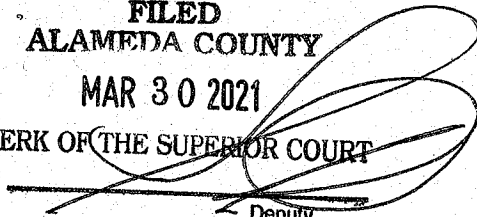


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8 *Attorneys for Plaintiff*

**ENDORSED  
FILED  
ALAMEDA COUNTY**  
**MAR 30 2021**  
CLERK OF THE SUPERIOR COURT  
By  Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 vs.

14 ROSS STORES, INC.,

15 Defendant.

Case No.: RG19031366

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People's right to be informed of the health  
27 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate  
28 (DINP), toxic chemicals found in Minky Accessories Purses and Minky Accessories Fanny

1 Packs sold and/or distributed by defendant Ross Stores, Inc. Ross (“Ross” or “Defendant”) in  
2 California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
4 reproductive toxicity, and DINP is a harmful chemical known to the State of California to cause  
5 cancer. On January 1, 1988 (DEHP) and on December 20, 2013 (DINP), the State of California  
6 listed DEHP and DINP as chemicals known to the State to cause cancer and each chemical has  
7 come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §  
8 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of  
9 California listed DEHP as a chemical known to cause reproductive toxicity. 4. Proposition 65  
10 requires all businesses with ten (10) or more employees that operate within California or sell  
11 products therein to comply with Proposition 65 regulations. Included in such regulations is the  
12 requirement that businesses must label any product containing a Proposition 65-listed chemical  
13 with a “clear and reasonable” warning before “knowingly and intentionally” exposing any person  
14 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 distributes and/or offers for sale in California,  
21 without a requisite exposure warning, Minky Accessories Purses and Minky Accessories Fanny  
22 Packs (the “Products”) that expose persons to DEHP and/or DINP.

23 7. Defendant’s failure to warn consumers and other individuals in California of the  
24 health hazards associated with exposure to DEHP/DINP in conjunction with the sale and/or  
25 distribution of the Products is a violation of Proposition 65 and subjects Defendant to the  
26 enjoinder and 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/DINP pursuant to Health and  
4 Safety 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. She brings  
9 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

10          11.       Defendant Ross, 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 Ross is a “person” in the course of doing business  
15 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 August 27, 2018 (purses) and November 5, 2019 (fanny packs), Plaintiff gave  
6 notice of alleged violation of Health and Safety Code § 25249.6 (the “Notices”) to Defendant  
7 concerning the exposure of California citizens to DEHP/DINP contained in the Products without  
8 proper warning, subject to a private action to Defendant and to the California Attorney General’s  
9 office and the offices of the County District attorneys and City Attorneys for each city with a  
10 population 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/DINP exposure, and that counsel believed there was meritorious and reasonable cause for  
15 a private action.

16 18. After receiving the Notices, 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 the Notice.

20 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
21 Notices 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 Products.

1           22.     The Products contain DEHP/DINP, a hazardous chemical found on the  
2 Proposition 65 list of chemicals known to be hazardous to human health.

3           23.     The Products do 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 27, 2018 (DINP) and at least November 5, 2019 (DEHP),  
6 continuing until the present, that Defendant has continued to knowingly and intentionally expose  
7 California users and consumers of the Products to DEHP/DINP without providing required  
8 warnings under Proposition 65.

9           25.     The exposures that are the subject of the Notice result from the purchase,  
10 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
11 exposure to these chemicals is through dermal absorption. Users may be exposed to DEHP/DINP  
12 by dermal absorption through direct skin contact with the Products during routine use when the  
13 Products are manipulated with bare hands. Concentrations of DEHP/DINP can be expected to  
14 build within the enclosed interior of the Products. This DEHP/DINP can potentially be absorbed  
15 to the surface of the interior contents that can be subsequently handled, worn, mouthed, or  
16 ingested by the user. If the Products are stored or transported in a carrier, DEHP/DINP that  
17 leaches from the purse may contaminate other articles contained within these closed spaces that  
18 are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the  
19 Products does not seem likely, some amount of exposure through ingestion can occur by  
20 touching the Products with subsequent touching of the user's hand to mouth.

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

24           27.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
25 Products exposes individuals to DEHP/DINP, and Defendant intends that exposures to  
26 DEHP/DINP will occur by its deliberate, non-accidental participation in the manufacture,  
27 importation, distribution, sale and offering of the Products to consumers in California.  
28

1 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
2 First Amended Complaint.

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

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

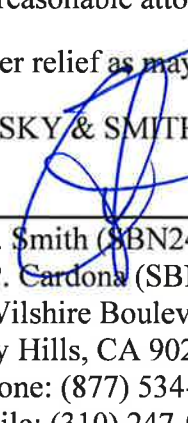
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
9 following relief:

- 10 A. That the court assess civil penalties against Defendant in the amount of  
11 \$2,500 per day for each violation in accordance with Health and Safety  
12 Code § 25249.7(b);
- 13 B. That the court preliminarily and permanently enjoin Defendant mandating  
14 Proposition 65 compliant warnings on the Products;
- 15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 16 D. That the court grant any further relief as may be just and proper.

17 Dated: March 20, 2021

BRODSKY & SMITH, LLC

18 By:   
19 Evan J. Smith (SBN242352)  
20 Ryan P. Cardona (SBN302113)  
21 9595 Wilshire Boulevard, Suite 900  
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23 Telephone: (877) 534-2590  
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*Attorneys for Plaintiff*

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**PROOF OF SERVICE**

I, Evan J. Smith, Esquire, declare:

I am over the age of 18 years and not a party to this action; my business address is 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212 and 333 E. City Avenue, Suite 805, Bala Cynwyd, PA 19004.

On March 30, 2021, I served the following document:

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

by serving a true copy of the above-described document in the following manner:

**BY ELECTRONIC MAIL & FEDERAL EXPRESS OVERNIGHT DELIVERY**

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The above-described documents were transmitted via electronic mail and federal express overnight delivery to the following parties on March 30, 2021:

NORTON ROSE FULBRIGHT US LLP  
Lauren Shoor  
Jeffrey Margulies  
555 South Flower Street, 41<sup>st</sup> Floor  
Los Angeles, CA 90071  
Telephone: (213) 892-9200  
Facsimile: (213) 892-9494  
[Lauren.shoor@nortonrosefulbright.com](mailto:Lauren.shoor@nortonrosefulbright.com)  
[jeff.margulies@nortonrosefulbright.com](mailto:jeff.margulies@nortonrosefulbright.com)

*Defendant*

I declare under penalty of perjury under the laws of California and of the United States of America that the above is true and correct.

Executed on March 30, 2021, at Bala Cynwyd, Pennsylvania.

Evan J. Smith

