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ENDORSED  
FILED  
ALAMEDA COUNTY

APR 11 2019

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 EMA BELL.  
11  
12 Plaintiff,  
13 vs.  
14 DECOR CRAFT, INC., RILEY ROSE,  
15 LLC,  
16 Defendants.

Case No.: **RG19014631**  
**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.

**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), a toxic chemical found in DCI  
28 Gift (a) Floating Glitter journals, and (b) Glitter pouches/cases/bags/totes sold and/or distributed

Filed By Fax

1 by defendants Décor Craft, Inc. (“Décor Craft”) and Riley Rose, LLC (“Riley Rose”)  
2 (collectively, “Defendants”) 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 the State to cause cancer and it has come under the purview of Proposition 65  
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
7 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
8 known to cause reproductive toxicity.

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 or threaten to violate” the statute. Health & Safety  
18 Code § 25249.7.

19 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in  
20 California, without a requisite exposure warning, DCI Gift (a) Floating Glitter journals, and (b)  
21 Glitter pouches/cases/bags/totes (the “Products”) that expose persons to DEHP.

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

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

28

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
2 Defendants 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. She brings  
9 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

10 11. Defendant Décor Craft, 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. Plaintiff alleges that defendant Décor Craft is a “person” in the  
14 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
15 25249.11.

16 12. Defendant Riley Rose, through its business, effectively imports, distributes, sells,  
17 and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
18 that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the  
19 State of California. Plaintiff alleges that defendant Riley Rose is a “person” in the course of  
20 doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

21 **VENUE AND JURISDICTION**

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

26 14. This Court has jurisdiction over this action pursuant to California Constitution  
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
2 this Court has jurisdiction over this lawsuit.

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

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 16. On October 19, 2018, and on October 22, 2018, Plaintiff gave notice of alleged  
11 violation of Health and Safety Code § 25249.6 (collectively, the “Notices”) to Defendants  
12 concerning the exposure of California citizens to DEHP contained in the Products without proper  
13 warning, subject to a private action to Defendant and to the California Attorney General’s office  
14 and the offices of the County District attorneys and City Attorneys for each city with a  
15 population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

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

25 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
26 Notices to Defendants, as required by law.

27 **FIRST CAUSE OF ACTION**

28 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

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

3           21.     Defendants have, at all times mentioned herein, acted as manufacturers,  
4 distributors, and/or retailers of the Product.

5           22.     The Products contain DEHP, a hazardous chemical found on the Proposition 65  
6 list of chemicals known to be hazardous to human health.

7           23.     The Products do not comply with the Proposition 65 warning requirements.

8           24.     Plaintiff, based on her best information and belief, avers that at all relevant times  
9 herein, and at least since September 19, 2018, continuing until the present, that Defendants have  
10 continued to knowingly and intentionally expose California users and consumers of the Products  
11 to DEHP without providing required warnings under Proposition 65.

12           25.     The exposures that are the subject of the Notices result from the purchase,  
13 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
14 exposure to these chemicals in the DCI Gift Floating Glitter journals is through dermal  
15 absorption. Users may be exposed to DEHP by dermal absorption through direct skin contact  
16 with the journal during routine use when the outer jacket of the journal is manipulated with bare  
17 hands. If the journal is stored or transported in a carrier, DEHP that leaches from the journal  
18 may contaminate other articles contained within these closed spaces that are subsequently  
19 handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the journal does not  
20 seem likely, some amount of exposure through ingestion can occur by touching the plastic jacket  
21 of the journal with subsequent touching of the user's hand to mouth. For instance, the user may  
22 moisten their fingers when turning pages of the journal.

23           26.     The primary route of exposure to these chemicals in the DCI Gift Glitter  
24 pouches/cases/bags/totes is through dermal absorption. Users may be exposed to DEHP by  
25 dermal absorption through direct skin contact with the pouch interior during routine use when the  
26 pouch is manipulated with bare hands. If the pouch is stored or transported in a carrier, DEHP  
27 that leaches from the item may contaminate other articles contained within these closed spaces  
28 that are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing

1 of the pouch does not seem likely, some amount of exposure through ingestion can occur by  
2 touching the pouch with subsequent touching of the user's hand to mouth.

3 27. 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 purchasers and users of  
5 the Products or until this known toxic chemical is removed from the Products.

6 28. Defendants have knowledge that the normal and reasonably foreseeable use of the  
7 Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will  
8 occur by their deliberate, non-accidental participation in the manufacture, importation,  
9 distribution, sale and offering of the Products to consumers in California

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

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

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

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff demands judgment against Defendants and requests the  
19 following relief:

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

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28 Dated: April 10, 2019

BRODSKY & SMITH, LLC

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