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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**05/18/2021**  
Clerk of the Court  
BY: JACKIE LAPREVOTTE  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA **CGC-21-591982**

10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 JO-ANN STORES, LLC,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELEIF**

**(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 at  
21 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  
28 Darice rolling totes/bags sold and/or distributed by defendant Jo-Ann Stores, LLC (“Jo-Ann  
Stores” or the “Defendant”) in California.

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

7           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
8 within California or sell products therein to comply with Proposition 65 regulations. Included in  
9 such regulations is the requirement that businesses must label any product containing a Proposition  
10 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”  
11 exposing any person to any such listed chemical.

12           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
17 25249.7.

18           6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
19 without a requisite exposure warning, Darice rolling totes/bags (the “Products”) that expose  
20 persons to DEHP.

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

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

27           9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendant to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code  
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

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

9 12. Defendant Jo-Ann Stores, through its business, effectively imports, distributes,  
10 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
11 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

12 13. Plaintiff alleges that defendant Jo-Ann Stores is a "person" in the course of doing  
13 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 14. Venue is proper in the County of San Francisco because one or more of the  
16 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
17 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
18 respect to the Products.

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

24 16. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
25 the State of California, has sufficient minimum contacts with the State of California, is registered  
26 with the California Secretary of State as foreign corporations authorized to do business in the State  
27 of California, and/or has otherwise purposefully availed itself of the California market. Such  
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
2 permissible with traditional notions of fair play and substantial justice.

### 3 STATUTORY BACKGROUND

4 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
6 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

7 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
8 “clear and reasonable warning” before being exposed to substances listed by the State of California  
9 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

10 No person in the course of doing business shall knowingly and intentionally expose any  
11 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
12 first giving clear and reasonable warning to such individual...

13 19. An exposure to a chemical in a consumer product is one “which results from a  
14 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
15 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
16 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
17 shall provide a warning to any person to whom the product is sold or transferred unless the product  
18 is packaged or labeled with a clear and reasonable warning.”

19 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
20 more of the following methods individually or in combination:<sup>1</sup>

- 21 a. A warning that appears on a product’s label or other labeling.  
22 b. Identification of the product at the retail outlet in a manner which provides  
23 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
24 thereof.  
25

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26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,  
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet  
3 with such conspicuousness, as compared with other words, statements, designs, or devices  
4 in the label, labeling or display as to render it likely to be read and understood by an  
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free  
7 information services, or any other system that provides clear and reasonable warnings.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the  
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

#### 14 **FACTUAL BACKGROUND**

15 22. On January 1, 1988, the State of California listed DEHP as a chemical known to  
16 the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
17 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
18 On October 24, 2003, the State of California listed DEHP as a chemical known to cause  
19 reproductive toxicity. In summary, the Listed Chemical was listed under Proposition 65 as a  
20 chemical known to the State to cause cancer and reproductive toxicity.

21 23. The consumer exposures that are the subject of this Complaint result from through  
22 dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin  
23 contact with the Products when handled with bare hands. Concentrations of DEHP can be expected  
24 to build within the interior of the Products. DEHP that leaches from the Products can contaminate  
25 articles contained within the interior of the Products, including but not limited to art supplies, that  
26 are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of the  
27 Products does not seem likely, some amount of exposure through ingestion can occur by touching  
28 the Products with subsequent touching of the user's hand to mouth.



1 30. Plaintiff is commencing this action more than sixty (60) days from the date of the  
2 Notice to Defendant, as required by law.

3 **FIRST CAUSE OF ACTION**

4 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

5 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of  
6 this Complaint as though fully set forth herein.

7 32. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of  
8 the Product.

9 33. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list  
10 of chemicals known to be hazardous to human health.

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

12 35. Plaintiff, based on her best information and belief, avers that at all relevant times  
13 herein, and at least since December 15, 2020, continuing until the present, that Defendant has  
14 continued to knowingly and intentionally expose California users and consumers of the Product to  
15 DEHP without providing required warnings under Proposition 65.

16 36. The exposures that are the subject of the Notice result from the purchase,  
17 acquisition, handling and recommended use of the Products. Users can be exposed to DEHP by  
18 dermal absorption through direct skin contact with the Products when handled with bare hands.  
19 Concentrations of DEHP can be expected to build within the interior of the Products. DEHP that  
20 leaches from the Products can contaminate articles contained within the interior of the Products,  
21 including but not limited to art supplies, that are subsequently handled, worn, mouthed, or ingested  
22 by the user. Finally, while mouthing of the Products does not seem likely, some amount of  
23 exposure through ingestion can occur by touching the Products with subsequent touching of the  
24 user's hand to mouth.

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

1 38. Defendant has knowledge that the normal and reasonably foreseeable use of the  
2 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur  
3 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of  
4 the Products to consumers in California

5 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
6 Complaint.

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

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

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
13 relief:

14 A. That the court assess civil penalties against each Defendant in the amount of \$2,500  
15 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
16 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

17 B. That the court preliminarily and permanently enjoin Defendant mandating  
18 Proposition 65 compliant warnings on the Products;

19 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
20 amount of \$50,000.00.

21 D. That the court grant any further relief as may be just and proper.

22 Dated: May 17, 2021

BRODSKY SMITH

23 By: \_\_\_\_\_

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