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

**05/18/2022**  
Clerk of the Court  
BY: LAURA SIMMONS  
Deputy Clerk

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO

12 PRECILA BALABBO,

13 Plaintiff,

14 vs.

15 JO-ANN STORES, LLC,

16 Defendant.

Case No.:

**CGC-22-599672**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

17 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following  
18 cause of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California against defendant Jo-Ann Stores, LLC (“Jo-Ann Stores”  
28 or “Defendant”) to enforce the People’s right to be informed of the health hazards caused by

1 exposure to bisphenol A (BPA) from the use of Hello Lovely loaf molds that are manufactured,  
2 distributed, offered for sale and/or sold by Jo-Ann Stores in California.

3 3. BPA is a harmful chemical known to the State of California to cause female  
4 reproductive toxicity. On May 11, 2015, the State of California listed BPA as a chemical known  
5 to the State to cause reproductive toxicity and BPA has come under the purview of Proposition 65  
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8  
7 & 25249.10(b).

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

13 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
14 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
15 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
16 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
17 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
18 25249.7.

19 6. Plaintiff alleges that Jo-Ann Stores distributes and/or offers for sale in California,  
20 without a requisite Proposition 65 exposure warning, Hello Lovely loaf molds (the “Products”)  
21 that expose persons to BPA when used as intended and/or for its intended purpose.

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

26 8. Plaintiff seeks civil penalties against Jo-Ann Stores for its violations of Proposition  
27 65 in accordance with Health and Safety Code § 25249.7(b).

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Jo-  
2 Ann Stores to provide purchasers or users of the Products with required warnings related to the  
3 dangers and health hazards associated with exposure to BPA from use of the Products pursuant to  
4 Health and Safety Code § 25249.7(a).

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

#### 6 **PARTIES**

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

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

14 13. Plaintiff alleges that defendant Jo-Ann Stores 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 14. Venue is proper in the County of San Francisco because one or more of the  
18 instances of wrongful conduct occurred and continues to occur in this county and/or because Jo-  
19 Ann Stores conducted, and continues to conduct, business in the County of San Francisco with  
20 respect to the Products.

21 15. 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 enforcement  
24 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
25 jurisdiction over this lawsuit.

26 16. This Court has jurisdiction over Jo-Ann Stores 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 market.  
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
3 and permissible with traditional notions of fair play and substantial justice.

#### 4 STATUTORY BACKGROUND

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

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

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

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

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

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

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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 May 11, 2015, the State of California listed BPA as a chemical known to the  
16 State to cause female reproductive toxicity and BPA has come under the purview of Proposition  
17 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
18 25249.8 & 25249.10(b).

19 23. The exposures that are the subject of this complaint result from the purchase,  
20 acquisition, handling and recommend use of the Products. The primary route of exposure to BPA  
21 from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the user  
22 handles the Products, or the Products are placed in contact with exposed areas of the user's skin.  
23 If the Products contact hard water and/or soaps at elevated pH, higher extraction rates of BPA and  
24 accumulation of BPA at the surface of the Products will result. Additionally, exposure through  
25 ingestion will occur by touching the Products with subsequent touching of the user's hand to  
26 mouth. Finally, oral ingestion of BPA will occur from internal ingestion of BPA that has leached  
27 into food.

1           24.    Jo-Ann Stores has distributed, offered to sell and/or sold the Products in California  
2 since at least May 26, 2021. The Products continue to be distributed and sold in California without  
3 a requisite Proposition 65 compliant BPA exposure warning.

4           25.    At all times relevant to this action, Jo-Ann Stores has knowingly and intentionally  
5 exposed users, consumers and/or purchasers of the Products to BPA without first providing a clear  
6 and reasonable exposure warning to such individuals.

7           26.    As a proximate result of Defendant's actions, and as a person in the course of doing  
8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
9 California, including in San Francisco County, have been exposed to BPA from use of the Products  
10 without having first been provided a clear and reasonable exposure warning. The individuals  
11 subject to the violative exposures include normal and foreseeable users and consumers that use the  
12 Products.

13                                                **SATISFACTION OF NOTICE REQUIREMENTS**

14           27.    On April 17, 2021, Plaintiff purchased the Product from JoAnn. At the time of  
15 purchase, Jo-Ann Stores did not provide a Proposition 65 exposure warning for BPA or any other  
16 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described  
17 *supra*.

18           28.    On or about May 20, 2021, the Product was sent to a testing laboratory to determine  
19 the concentration of BPA present on the surface of the Product.

20           29.    On May 24, 2021, the laboratory provided the results of its analysis. Surface BPA  
21 was collected using a wipe test. Results of this test concluded the presence of BPA at the surface  
22 of the product (the "Chemical Test Report").

23           30.    Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
24 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
25 foreseeable use of the Product, exposure to BPA will occur at levels that require Proposition 65  
26 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
27 Code of Regulations.

28

1 31. On May 25, 2021, Plaintiff received from the analytical chemist an exposure  
2 assessment report which concluded that persons in California who use the Products will be exposed  
3 to levels of BPA that require a Proposition 65 exposure warning.

4 32. On May 26, 2021, Plaintiff gave notice of alleged violation of Health and Safety  
5 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to BPA  
6 from use of the Products without proper warning, subject to a private action to Defendant and to  
7 the California Attorney General’s office and the offices of the County District attorneys and City  
8 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
9 violations allegedly occurred.

10 33. The Notice complied with all procedural requirements of Proposition 65 including  
11 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
12 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
13 BPA exposure, and that counsel believed there was meritorious and reasonable cause for a private  
14 action.

15 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of  
16 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
17 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
18 the subject of the Notice.

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

21 **FIRST CAUSE OF ACTION**

22 **(By Plaintiff against Defendant for its Violation of Proposition 65)**

23 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of  
24 this first amended complaint as though fully set forth herein.

25 37. Defendant has, at all times mentioned herein, acted as a distributor and/or retailer  
26 of the Products.

27 38. Use of the Products will expose users and consumers thereof to BPA, a hazardous  
28 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

1 39. The Products do not comply with the Proposition 65 warning requirements.

2 40. Plaintiff, based on her best information and belief, avers that at all relevant times  
3 herein, and at least since May 26, 2021, continuing until the present, that Defendant has continued  
4 to knowingly and intentionally expose California users and consumers of the Products to BPA  
5 without providing required warnings under Proposition 65.

6 41. The exposures that are the subject of the Notice result from the purchase,  
7 acquisition, handling, and recommended use of the Products. The primary route of exposure to  
8 BPA from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the  
9 user handles the Products, or the Products are placed in contact with exposed areas of the user's  
10 skin. If the Products contact hard water and/or soaps at elevated pH, higher extraction rates of BPA  
11 and accumulation of BPA at the surface of the Products will result. Additionally, exposure through  
12 ingestion will occur by touching the Products with subsequent touching of the user's hand to  
13 mouth. Finally, oral ingestion of BPA will occur from internal ingestion of BPA that has leached  
14 into food.

15 42. Plaintiff, based on her best information and belief, avers that such exposures will  
16 continue every day until clear and reasonable warnings are provided to purchasers and users or  
17 until BPA is removed from the Products.

18 43. Defendant has knowledge that the normal and reasonably foreseeable use of the  
19 Product exposes individuals to BPA, and Defendant intends those exposures to BPA will occur by  
20 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
21 Products to consumers in California.

22 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to the  
23 filing of the first amended complaint.

24 45. Pursuant to Health and Safety Code § 25249.7(b), because of the above-described  
25 acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

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

28



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
3 relief:

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

7 B. That the Court preliminarily and permanently enjoin Defendant mandating  
8 Proposition 65 compliant warnings on the Products;

9 C. That the Court grant Plaintiff reasonable attorney’s fees and costs of suit, in the  
10 amount of \$50,000.00.

11 D. That the Court grant any further relief as may be just and proper.

12 Dated: March 29, 2022

BRODSKY & SMITH

13 By:  \_\_\_\_\_

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