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ELECTRONICALLY  
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Superior Court of California,  
County of San Francisco

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Clerk of the Court  
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Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7  
8 COUNTY OF SAN FRANCISCO

9 PRECILA BALABBO,

10 Plaintiff,

11 vs.

12 JO-ANN STORES, LLC.,

13 Defendant.

Case No.: CGC-22-603311

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

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

14 Plaintiffs Precila Balabbo (“Balabbo”) and Ema Bell (“Bell”) (collectively, “Plaintiffs”),  
15 by and through their attorneys, allege the following cause of action in the public interest of the  
16 citizens of the State of California.

17 **BACKGROUND OF THE CASE**

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

24 2. This Second Amended Complaint is a representative action brought by Plaintiffs in  
25 the public interest of the citizens of the State of California to enforce the People’s right to be  
26 informed of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic  
27

1 chemical found in products sold and/or distributed by defendant Jo-Ann Stores, LLC (“Jo-Ann”  
2 or “Defendant”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
4 birth defects or other reproductive harm. On January 1, 1988, the State of California listed DEHP  
5 as a chemical known to the State to cause cancer and it has come under the purview of Proposition  
6 65 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 birth defects or other reproductive harm.

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

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

20 6. Plaintiffs allege that Defendant distributes, sells and/or offers for sale in California  
21 (a) Webster Fine Art photo album snap-in pouches, UPC # 608807004285, (b) Webster Fine Art  
22 photo album cover caddys, UPC # 608807003943, (c) hildie & jo jump ring mandrels, #  
23 7868337868334, (d) Big Twist All-In-One vertical storage totes, UPC # 6972857576073, (e) Place  
24 & Time small sun shade cases, # 18622076, (f) Place & Time vases, UPC # 8904383300240, and  
25 (g) Top Notch rolling totes, # 400191058406, (collectively, the “Products”) without a requisite  
26 exposure warning that the Products expose persons to DEHP.

27 7. Defendant’s failure to warn consumers and other individuals in California of the  
28 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution

1 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil  
2 penalties described herein.

3 8. Plaintiffs seek civil penalties against Defendant for its violations of Proposition 65  
4 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiffs also seek injunctive relief, preliminarily and permanently requiring  
6 Defendant to provide purchasers or users of the Products with required warnings related to the  
7 dangers and health hazards associated with exposure to the DEHP, pursuant to Health and Safety  
8 Code § 25249.7(a).

9 10. Plaintiffs further seek a reasonable award of attorney's fees and costs.

### 10 PARTIES

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

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

19 13. Defendant Jo-Ann, through its business, effectively imports, distributes, sells,  
20 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
21 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
22 Plaintiffs allege that defendant Jo-Ann is a "person" in the course of doing business within the  
23 meaning of Health & Safety Code sections 25249.6 and 25249.11.

### 24 VENUE AND JURISDICTION

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





1 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
2 known to cause birth defects or other reproductive harm.

3 23. The exposures that are the subject of the Notices result from the purchase,  
4 acquisition, handling and recommended use of the Products. The primary route of exposure to the  
5 is through dermal absorption directly through the skin when consumers use, touch, or handle the  
6 Products. Exposure through ingestion will occur by touching the Products with subsequent  
7 touching of the user's hand to mouth. No clear and reasonable warning is provided with the  
8 Products regarding the health hazards of exposure.

9 24. Defendant has manufactured, processed, marketed, distributed, offered to sell  
10 and/or sold the Products in California since at least December 7, 2021 with respect to the Webster  
11 Fine Art photo album snap-in pouches; since at least December 20, 2021 with respect to the  
12 Webster Fine Art photo album cover caddys; since at least February 8, 2022 with respect to the  
13 hildie & jo jump ring mandrels; since at least July 5, 2022 with respect to the Big Twist All-In-  
14 One vertical storage totes; since at least July 12, 2022 with respect to the Place & Time small sun  
15 shade cases; since at least August 24, 2022 with respect to the Place & Time vases; and since at  
16 least May 24, 2023 with respect to the Top Notch rolling totes. The Products continue to be  
17 distributed and sold in California without the requisite warning information.

18 25. At all times relevant to this action, Defendant has knowingly and intentionally  
19 exposed users of the Products to DEHP without first giving a clear and reasonable exposure  
20 warning to such individuals.

21 26. As a proximate result of acts by Defendant, as a person in the course of doing  
22 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
23 California, including in San Francisco County, have been exposed to DEHP without a clear and  
24 reasonable warning on the Products. The individuals subject to the violative exposures include  
25 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
26 the Products.

**SATISFACTION OF NOTICE REQUIREMENTS**

1  
2           27.     Plaintiffs purchased the Products from Jo-Ann. At the time of the purchases, Jo-  
3 Ann did not provide a Proposition 65 exposure warning for DEHP in a manner consistent with  
4 H&S Code § 25603.1 as described *supra*.

5           28.     Each Product was sent to a testing laboratory to determine the phthalate content of  
6 the Products.

7           29.     The results of these analyses determined the Products expose users to DEHP (each,  
8 a “Chemical Test Report,” collectively, the “Chemical Test Reports”).

9           30.     Plaintiffs provided the Chemical Test Reports and each Product to an analytical  
10 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable  
11 and foreseeable use of the Products, exposure to the DEHP will occur at levels that require  
12 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of  
13 the California Code of Regulations.

14           31.     Plaintiffs received from the analytical chemist an exposure assessment report for  
15 each Product which concluded that persons in California who use the Products will be exposed to  
16 levels of DEHP that require a Proposition 65 exposure warning.

17           32.     On December 7, 2021 (Webster Fine Art photo album snap-in pouches), December  
18 20, 2021 (Webster Fine Art photo album cover caddys), February 8, 2022 (hildie & jo jump ring  
19 mandrels), July 5, 2022 (Big Twist All-In-One vertical storage totes), July 12, 2022 (Place & Time  
20 small sun shade cases), August 24, 2022 (Place & Time vases), and May 24, 2023 (Top Notch  
21 rolling totes), Plaintiffs gave notice of alleged violation of Health and Safety Code § 25249.6  
22 (collectively, the “Notices”) to Defendant concerning the exposure of California citizens to DEHP  
23 from use of the Products without proper warning, subject to a private action to Defendant and to  
24 the California Attorney General’s office and the offices of the County District attorneys and City  
25 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
26 violations allegedly occurred. See attached at Exhibits A – G a true and correct copy of each  
27 Notice.

28           33.     The Notices complied with all procedural requirements of Proposition 65 including

1 the attachment of a Certificate of Merit affirming that Plaintiffs' counsel had consulted with at  
2 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
3 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private  
4 action.

5 34. After receiving the Notices, and to Plaintiffs' best information and belief, none of  
6 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
7 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
8 the subject of the Notices.

9 35. Plaintiffs are commencing this action more than sixty (60) days from the date of  
10 each Notice to Defendant, as required by law.

11 **FIRST CAUSE OF ACTION**

12 **(By Plaintiffs against Defendant for the Violation of Proposition 65)**

13 36. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 35 of  
14 this Second Amended Complaint as though fully set forth herein.

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

17 38. Use of the Products will expose users and consumers thereof to DEHP, hazardous  
18 chemicals found on the Proposition 65 list of chemicals known to be hazardous to human health.

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

20 40. Plaintiff, based on their best information and belief, avers that at all relevant times  
21 herein, and since at least December 7, 2021 with respect to the Webster Fine Art photo album  
22 snap-in pouches; since at least December 20, 2021 with respect to the Webster Fine Art photo  
23 album cover caddys; since at least February 8, 2022 with respect to the hildie & jo jump ring  
24 mandrels; since at least July 5, 2022 with respect to the Big Twist All-In-One vertical storage totes;  
25 since at least July 12, 2022 with respect to the Place & Time small sun shade cases; since at least  
26 August 24, 2022 with respect to the Place & Time vases; and since at least May 24, 2023 with  
27 respect to the Top Notch rolling tote, continuing until the present, that Defendant has continued to  
28

1 knowingly and intentionally expose California users and consumers of the Products to DEHP  
2 without providing required warnings under Proposition 65.

3 41. The exposures that are the subject of the Notice result from the purchase,  
4 acquisition, handling and recommended use of the Products. The primary route of exposure to the  
5 is through dermal absorption directly through the skin when consumers use, touch, or handle the  
6 Products. Exposure through ingestion will occur by touching the Products with subsequent  
7 touching of the user's hand to mouth. No clear and reasonable warning is provided with the  
8 Products regarding the health hazards of exposure.

9 42. Plaintiffs, based on their best information and belief, avers that such exposures will  
10 continue every day until clear and reasonable warnings are provided to purchasers and users or  
11 until this known toxic chemical is removed from the Products.

12 43. Defendant has knowledge that the normal and reasonably foreseeable use of the  
13 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur  
14 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of  
15 the Products to consumers in California.

16 44. Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to  
17 this Second Amended Complaint.

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs demand 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 in accordance with Health and Safety Code §  
6 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 Plaintiffs 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: September 7, 2023

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