

Joseph D. Aglio (SBN 167292)
JOSEPH D. AGLIOZZO LAW CORPORATION
1601 N. Sepulveda Boulevard, #649
Manhattan Beach, CA 90266
Telephone: (424) 241-3614

Attorney for Plaintiff SARA HAMMOND

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Xian-xii Bowie, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SARA HAMMOND, an individual,

Plaintiff,

v.

UPPER CANADA SOAP & CANDLE
MAKERS CORPORATION, a
corporation,

Defendant.

CASE NO.: **22CV007911**

**COMPLAINT FOR PENALTY AND
INJUNCTIVE RELIEF**

(Health & Safety Code, § 25249.5, et seq.)

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7. Defendant manufactures, distributes, imports, sells and/or offers for sale in California reusable plastic storage bags and cases for products, including but not limited to, bath, spa, personal care, skin care, and cosmetic products, sold, distributed, and/or manufactured by Upper Canada Soap & Candle Makers Corporation, containing DEHP that were sold or

distributed for sale in California (collectively the “Covered Products”) without a Proposition 65 warning.

8. Defendant’s failure to warn consumers in the State of California about their exposures to the Listed Chemical in conjunction with Defendant’s manufacture, distribution, import, and/or sale of the Products is a violation of Proposition 65 and subjects Defendant to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.8(a) & (b)(1).

9. For Defendant’s violations of Proposition 65, Plaintiff seeks permanent injunctive relief to compel Defendant to provide purchases or users of the Products with the required warning regarding the health hazards of the Listed Chemical in the Products. Health & Safety Code § 25249.7(a).

10. Pursuant to Health & Safety Code § 25249.7(b), Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65.

PARTIES

11. Plaintiff Sara Hammond (“Plaintiff”) is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and she brings this action in the public interest pursuant to Health & Safety Code § 25249.7(d).

12. Defendant Upper Canada Soap & Candle Makers Corporation (“DC”) is a corporation, and is considered a “person in the course of doing business” within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

13. Defendant manufactures, imports, distributes, sells, and/or offers for sale the Products in the State of California.

VENUE AND JURISDICTION

14. Venue is proper in Alameda Superior Court, pursuant to Code of Civil Procedure §§ 393, 395 and 395.5 because this Court is a court of competent jurisdiction, because Plaintiff seeks civil penalties against Defendant, because one of more instances of wrongful conduct

1 occurred, and continue to occur, in the County of Alameda, and/or because Defendant
2 conducted, and continues to conduct, business in this county with respect to the Products.

3 15. The Court has jurisdiction over this action pursuant to Health & Safety Code §
4 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
5 California Constitution Article VI, section 10, which grants the Superior Court “original
6 jurisdiction in all causes except those given by statute to other trial courts” because this case is
7 not given by statute to other trial courts.

8 16. This Court has jurisdiction over Defendant because Defendant is a business entity
9 that does sufficient business, has sufficient minimum contacts in California or otherwise
10 intentionally avails itself of the California market through the sale, marketing, importation,
11 distribution or use of the Products in California.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of Proposition 65)**

14 17. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
15 Paragraphs 1 through 16, inclusive.

16 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
17 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
18 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
19 harm.” Proposition 65, § 1(b).

20 19. Proposition 65 states, “No person in the course of doing business shall knowingly
21 and intentionally expose any individual to a chemical known to the state to cause cancer or
22 reproductive toxicity without first giving clear and reasonable warning to such individual ...”
23 Health & Safety Code § 25249.6.

24 20. On or about September 1, 2021 Plaintiff served a 60-Day Notice of Violation,
25 together with the requisite certificate of merit, on DC and Ross Stores (the retailer), the
26 California Attorney General, the District Attorneys of every county in California, and the City
27 Attorneys of every California City with a population greater than 750,000 (collectively, “Public
28 Prosecutors”). The 60-Day Notice of Violation stated that, as a result of DC’s and Ross Stores’

1 sale of the Products within California, purchasers and users in California were being exposed to
2 DEHP resulting from their reasonably foreseeable use of the Products, without having been
3 provided with a “clear and reasonable warning” regarding such toxic exposures as required by
4 Proposition 65. DC and Ross Stores were also served with “Appendix A: Office of
5 Environmental Health Hazard Assessment California Environmental Protection Agency, The
6 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary” as
7 required by 27 C.C.R. § 25903(b)(1).

8 21. On December 22, 2021, Plaintiff served a Supplemental 60-Day Notice of
9 Violation (the “Notice”), together with the requisite certificate of merit, on DC and Ross Stores.
10 The Notice alleged that, as a result of Defendant’s manufacture, distribution, and/or import of the
11 Products within California, purchasers and users in California were being exposed to DEHP
12 resulting from their reasonably foreseeable use of the Products, without having been provided
13 with a “clear and reasonable warning” regarding such toxic exposures as required by Proposition
14 65. Defendants were also served with “Appendix A: Office of Environmental Health Hazard
15 Assessment California Environmental Protection Agency, The Safe Drinking Water and Toxic
16 Enforcement Act of 1986 (Proposition 65): A Summary” as required by 27 C.C.R. §
17 25903(b)(1).

18 22. After receiving Plaintiff’s Notice, the appropriate public prosecutors and
19 enforcement agencies have declined to commence a cause of action against Defendant under
20 Proposition 65.

21 23. The Products manufactured, imported, distributed, sold, and/or offered for sale in
22 California by Defendant contain the Listed Chemical such that they require a “clear and
23 reasonable” warning under Proposition 65.

24 24. Defendant knew or should have known that the Products it manufactures, imports,
25 distributes, sells, and/or offers for sale in California contain the Listed Chemical.

26 25. The Listed Chemical is present in or on the Products in such a way as to expose
27 individuals to the Listed Chemical through dermal contact and/or ingestion during reasonably
28 foreseeable use of the Products.

26. Defendant had knowledge that the normal and reasonably foreseeable use of the Products may expose individuals to the Listed Chemical through dermal contact and/or ingestion.

27. Defendant failed to provide a “clear and reasonable warning” to those consumers and other individuals in the State of California who were or could become exposed to the Listed Chemical through dermal contact and/or ingestion during reasonably foreseeable use of the Products.

28. Contrary to the express policy and statutory prohibition of Proposition 65, individuals exposed to the Listed Chemical through dermal contact and/or ingestion during reasonably foreseeable use of the Products sold by Defendant without a “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

30. As a consequence of the above described acts, Health & Safety Code § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against Defendant in the amount of \$2,500 per day for each violation;

2. That the Court, pursuant to Health & Safety Code § 25249.7(a), permanently enjoin Defendant from manufacturing, importing, distributing, or offering the Products for sale in California without first providing a “clear and reasonable warning” as defined by the California Code of Regulations title 27, § 25600 *et seq.*, as to the harms associated with exposures to the Listed Chemical;

3. That the Court grant Plaintiff her reasonable attorneys' fees and costs of suit; and

4. That the Court grant such other and further relief as may be just and proper.

1 Dated: March 3, 2022

2 Respectfully Submitted,

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4 By: Joe Aglio
5 Joseph D. Aglio
6 Attorney for Plaintiff SARA HAMMOND
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