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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

04/20/2022
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

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

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 CRICUT, INC., JO-ANN STORES, LLC

15 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

CGC-22-599260

16 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following
17 cause 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 bisphenol A (BPA) from the use of Cricut Machine Tool Organizers
28 that are manufactured, distributed, offered for sale and/or sold by defendant Cricut, Inc., (“Cricut”)

1 and/or defendant Jo-Ann Stores, LLC (“Jo-Ann Stores”) (collectively, the “Defendants”) in
2 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 Defendants distribute and/or offer for sale in California,
20 without a requisite Proposition 65 exposure warning, Cricut Machine Tool Organizers, (the
21 “Products”) that expose persons to BPA when used as intended and/or for its intended purpose.

22 7. Defendants’ 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 Defendants to
25 the enjoinder and civil penalties described herein.

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

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

3 16. 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 themselves 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 **STATUTORY BACKGROUND**

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

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

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

19 19. An exposure to a chemical in a consumer product is one “which results from a
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
23 shall provide a warning to any person to whom the product is sold or transferred unless the product
24 is packaged or labeled with a clear and reasonable warning.”

1 23. The exposures that are the subject of this complaint result from the purchase,
2 acquisition, handling and recommend use of the Products. The primary route of exposure to BPA
3 from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the user
4 handles the Products, or the Products are placed in contact with exposed areas of the user's skin.
5 Additionally, exposure through ingestion will occur by touching the Products with subsequent
6 touching of the user's hand to mouth.

7 24. Defendants have distributed, offered to sell and/or sold the Products in California
8 since at least January 27, 2022. The Products continue to be distributed and sold in California
9 without a requisite Proposition 65 compliant BPA exposure warning.

10 25. At all times relevant to this action, Defendants have knowingly and intentionally
11 exposed users, consumers and/or purchasers of the Products to BPA without first providing a clear
12 and reasonable exposure warning to such individuals.

13 26. As a proximate result of Defendants' actions, and as persons in the course of doing
14 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
15 California, including in San Francisco County, have been exposed to BPA from use of the Products
16 without having first been provided a clear and reasonable exposure warning. The individuals
17 subject to the violative exposures include normal and foreseeable users and consumers that use the
18 Products.

19 SATISFACTION OF NOTICE REQUIREMENTS

20 27. On December 2, 2021, Plaintiff purchased the Product from Jo-Ann Stores. At the
21 time of purchase, Defendants did not provide a Proposition 65 exposure warning for BPA or any
22 other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
23 *supra*.

24 28. On or about January 22, 2022, the Product was sent to a testing laboratory to
25 determine the concentration of BPA present on the surface of the Product.

26 29. On January 24, 2022, the laboratory provided the results of its analysis. Surface
27 BPA was collected using a wipe test. Results of this test concluded the presence of BPA at the
28 surface of the product (the "Chemical Test Report").

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

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

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

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

8 40. Plaintiff, based on her best information and belief, avers that at all relevant times
9 herein, and at least since January 27, 2022, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Products
11 to BPA without providing required warnings under Proposition 65.

12 41. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling, and recommended use of the Products. The primary route of exposure to
14 BPA from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the
15 user handles the Products, or the Products are placed in contact with exposed areas of the user's
16 skin. If the Products contact hard water and/or soaps at elevated pH, higher extraction rates of BPA
17 and accumulation of BPA at the surface of the Products will result. Additionally, exposure through
18 ingestion will occur by touching the Products with subsequent touching of the user's hand to
19 mouth.

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

23 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
24 Product exposes individuals to BPA, and Defendants intend those exposures to BPA will occur by
25 their deliberate, non-accidental participation in the importation, distribution, sale and offering of
26 the Products to consumers in California.

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

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
7 relief:

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

11 B. That the Court preliminarily and permanently enjoin each Defendant mandating
12 Proposition 65 compliant warnings on the Products;

13 C. That the Court grant Plaintiff reasonable attorney's fees and costs of suit, in the
14 amount of \$50,000.00.

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

16 Dated: April 20, 2022

BRODSKY & SMITH

17 By:  _____

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