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

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 JO-ANN STORES, LLC,

15 Defendant.

Case No.: CGC-22-603311

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: February 21, 2024

Hearing Time: 9:30 AM

Complaint Filed: December 6, 2022

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiffs
3 Precila Balabbo (“Balabbo”) and Ema Bell (“Bell”) (collectively, “Plaintiffs”) acting on behalf of
4 the public interest and Jo-Ann Stores, LLC (“Jo-Ann” or “Defendant”) with Plaintiffs and
5 Defendant collectively referred to as the “Parties” and each of them as a “Party.” Plaintiffs are
6 individuals residing in California that seek to promote awareness of exposures to toxic chemicals
7 and improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. Jo-Ann is alleged to be a person in the course of doing business for purposes of
9 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Plaintiffs allege that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of (a) Webster Fine Art photo album
12 snap-in pouches, UPC # 608807004285, (b) Webster Fine Art photo album cover caddys, UPC #
13 608807003943, (c) hildie & jo jump ring mandrels, # 7868337868334, (d) Big Twist All-In-One
14 vertical storage totes, UPC # 6972857576073, (e) Place & Time small sun shade cases, # 18622076,
15 (f) Place & Time vases, UPC # 8904383300240, and (g) Top Notch rolling totes, # 400191058406,
16 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is
17 listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and
18 birth defects or other reproductive harm.

19 1.3 **Notices of Violation.** On or about December 7, 2021, Balabbo served Jo-Ann and
20 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
21 pursuant to Health & Safety Code §25249.7(d) (the “First December Notice”), alleging that
22 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Webster
23 Fine Art photo album snap-in pouches, UPC # 608807004285, expose users in California to DEHP.
24 No public enforcer has brought and is diligently prosecuting the claims alleged in the First
25 December Notice.

26 On or about December 20, 2021, Balabbo served Jo-Ann and various public enforcement
27 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
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1 §25249.7(d) (the “Second December Notice”), alleging that Defendant violated Proposition 65 for
2 failing to warn consumers and customers that use of Webster Fine Art photo album cover caddys,
3 UPC # 608807003943, expose users in California to DEHP. No public enforcer has brought and is
4 diligently prosecuting the claims alleged in the Second December Notice.

5 On or about February 8, 2022, Balabbo served Jo-Ann and various public enforcement
6 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
7 §25249.7(d) (the “February Notice”), alleging that Defendant violated Proposition 65 for failing to
8 warn consumers and customers that use of hildie & jo jump ring mandrels, # 7868337868334,
9 expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting
10 the claims alleged in the February Notice.

11 On or about July 5, 2022, Bell served Jo-Ann and various public enforcement agencies with
12 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
13 (the “First July Notice”), alleging that Defendant violated Proposition 65 for failing to warn
14 consumers and customers that use of Big Twist All-In-One vertical storage totes, UPC #
15 6972857576073, expose users in California to DEHP. No public enforcer has brought and is
16 diligently prosecuting the claims alleged in the First July Notice.

17 On or about July 12, 2022, Bell served Jo-Ann and various public enforcement agencies
18 with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
19 §25249.7(d) (the “Second July Notice”), alleging that Defendant violated Proposition 65 for failing
20 to warn consumers and customers that use of Place & Time small sun shade cases, # 18622076,
21 expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting
22 the claims alleged in the Second July Notice.

23 On or about August 24, 2022, Bell served Jo-Ann and various public enforcement agencies
24 with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
25 §25249.7(d) (the “August Notice”), alleging that Defendant violated Proposition 65 for failing to
26 warn consumers and customers that use of Place & Time vases, UPC # 8904383300240, expose
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1 users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims
2 alleged in the August Notice.

3 On or about May 24, 2023, Balabbo served Jo-Ann and various public enforcement agencies
4 with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
5 §25249.7(d) (the “May Notice”), alleging that Defendant violated Proposition 65 for failing to warn
6 consumers and customers that use of Top Notch rolling totes, # 400191058406, expose users in
7 California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged
8 in the May Notice.

9 The First December Notice, the Second December Notice, the February Notice, the First
10 July Notice, the Second July Notice, the August Notice, and the May Notice are collectively
11 referred to herein, as the “Notices.”

12 1.4 **Action.** On December 6, 2022, Balabbo filed a complaint (the “Complaint”). On
13 February 24, 2023, Balabbo filed a first amended complaint (the “First Amended Complaint”). On
14 September 7, 2023, Plaintiffs filed a second amended complaint (the “Second Amended
15 Complaint”).

16 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
18 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
19 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
20 of all claims which were or could have been raised in the Action based on the facts alleged therein
21 and in the Notices.

22 1.6 Defendant denies the material allegations contained in Plaintiffs’ Notices,
23 Complaint, First Amended Complaint, and Second Amended Complaint and maintains that it has
24 not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission
25 by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this
26 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,
27 conclusion, issue of law, or violation of law, such being specifically denied by Defendant.
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1 However, this section shall not diminish or otherwise affect the obligations, responsibilities, and
2 duties of Defendant under this Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 **Covered Products.** The term “Covered Products” means (a) Webster Fine Art
5 photo album snap-in pouches, UPC # 608807004285, (b) Webster Fine Art photo album cover
6 caddys, UPC # 608807003943, (c) hildie & jo jump ring mandrels, # 7868337868334, (d) Big Twist
7 storage organizers and totes, including but not limited to UPC # 6972857576073 and UPC
8 #6972857576004, (e) Place & Time small sun shade cases, # 18622076, (f) Place & Time vases,
9 UPC # 8904383300240, and (g) Top Notch rolling totes, # 400191058406 that are sold or offered
10 for sale in California by Jo-Ann.

11 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**


14 3.1 **Reformulation of Covered Products.** Within 120 days following the Effective
15 Date, and continuing thereafter, Covered Products that Jo-Ann directly sells, or offers for sale in
16 California shall either be: (a) reformulated Products pursuant to § 3.2, below; or (b) labeled with a
17 clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this
18 Consent Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the
19 standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not
20 apply to any Reformulated Product.

21 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
22 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
23 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
24 and 8270C or other methodology utilized by federal or state government agencies for the purpose
25 of determining the phthalate content in a solid substance.


26 3.3 **Clear and Reasonable Warning.** Within 120 days following the Effective Date,
27 and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and
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1 3.4 must be provided for all Covered Products that Defendant sells, or offers for sale in California
2 that is not a Reformulated Product. The warning shall consist of either the **Warning** or **Alternative**
3 **Warning** described in §§ 3.3(a) or (b), respectively:

4 (a) **Warning.** The “Warning” shall consist of the statement:

5  **WARNING:** This product can expose you to chemicals including di(2-
6 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
7 cancer and birth defects or other reproductive harm. For more information go to
8 www.P65Warnings.ca.gov.

9 (b) **Alternative Warning:** Jo-Ann may, but is not required to, use the alternative short-
10 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

11  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

12 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
13 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
14 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
15 triangle with a black outline, except that if the sign or label for the Covered Product does not use
16 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
17 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
18 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
19 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
20 displayed with such conspicuousness, as compared with other words, statements, or designs as to
21 render it likely to be read and understood by an ordinary individual under customary conditions of
22 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
23 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
24 the use of the Covered Product and shall be at least the same size as those other safety warnings.

25 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
26 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
27 Jo-Ann offers Products for sale to consumers in California. The requirements of this Section shall
28 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
“**WARNING,**” appears on the product display page, or by otherwise prominently displaying the

1 warning to the purchaser prior to completing the purchase. To comply with this Section, Jo-Ann
2 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
3 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
4 the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide
5 such sellers with written notice in accordance with Title 27, California Code of Regulations, §
6 25600.2. Third-party internet sellers of the Covered Product that have been provided with written
7 notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in
8 Section 5 of this Agreement if they fail to meet the warning requirements herein.

9 **3.5 Compliance with Warning Regulations.** The Parties recognize that the warning
10 methods and content set forth in §§ 3.3 and 3.4 are not the exclusive means of providing a clear
11 and reasonable warning under Proposition 65 and its implementing regulations. Defendant shall be
12 deemed to be in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this
13 Consent Judgment or by conforming to any Office of Environmental Health Hazard Assessment
14 (“OEHHA”) safe harbor warning regulations applicable to the Covered Products and alleged
15 exposures at issue after the Effective Date. If “consumer information,” as that term is defined in
16 Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to
17 time, is provided in a foreign language, Jo-Ann shall provide the **Warning** or **Alternative Warning**
18 in the foreign language in accordance with applicable warning regulations adopted by OEHHA.

19 **3.6 Sell-Through for Existing Inventory.** The warning and reformulation
20 requirements of this Section 3 shall not apply to Covered Products that Jo-Ann places into the
21 stream of commerce within 120 days of the Effective Date, including but not limited to Covered
22 Products in distribution centers, in inventory, or at retail locations. Any such Covered Products
23 placed into the stream of commerce within 120 days of the Effective Date shall be subject to the
24 releases provided in Section 5.

25 **4. MONETARY TERMS**

26 **4.1 Civil Penalty.** Jo-Ann shall pay \$7,000.00 as a Civil Penalty pursuant to Health and
27 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
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1 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
2 Penalty remitted to Plaintiffs, as provided by California Health & Safety Code § 25249.12(d).

3 4.1.1 Within fifteen (15) days of the Effective Date, Jo-Ann shall issue two
4 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$5,250.00; and
5 to (b) “Brodsky Smith in Trust for Plaintiffs” in the amount of \$1,750.00. Payment owed to
6 Plaintiffs pursuant to this Section shall be delivered to the following payment address:

7 Evan J. Smith, Esquire
8 Brodsky Smith
9 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

10 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
11 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

20 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
21 above as proof of payment to OEHHA.

22 4.2 **Attorneys’ Fees.** Within fifteen (15) days of the Effective Date, Jo-Ann shall pay
23 \$70,500.00 to Brodsky Smith as complete reimbursement for Plaintiffs’ attorneys’ fees and costs
24 incurred as a result of investigating, bringing this matter to the attention of Jo-Ann, litigating and
25 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
26 of Civil Procedure § 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiffs
3 acting on their own behalf, and on behalf of the public interest, and Jo-Ann, and its parents,
4 shareholders, members, directors, officers, managers, employees, representatives, agents,
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
7 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
8 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
9 retailers, including but not limited to its parents, subsidiaries, and affiliates, franchisees, and
10 cooperative members (“Downstream Releasees”), of all claims for violations of Proposition 65
11 based on exposure to DEHP from use of the Covered Products manufactured, distributed, or sold
12 by Jo-Ann prior to (and up to 120 days following) the Effective Date as set forth in the Notices. It
13 is the Parties’ intention that this Consent Judgment shall have preclusive effect such that no other
14 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
15 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
16 65 based on exposure to DEHP from use of the Covered Products that was alleged in the Complaint,
17 First Amended Complaint, and/or Second Amended Complaint, or that could have been brought
18 pursuant to the Notices against Jo-Ann and the Downstream Releasees (“Proposition 65 Claims”).
19 Jo-Ann’s compliance with the terms of this Consent Judgment constitutes compliance with
20 Proposition 65 by Jo-Ann with regard to exposure to DEHP from use of the Covered Products.

21 5.2 In addition to the foregoing, Plaintiffs, on behalf of themselves, their past and
22 current agents, representatives, attorneys, and successors and assignees, and *not* in their
23 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
24 any form of legal action and releases Jo-Ann, Defendant Releasees, and Downstream Releasees
25 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
26 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
27 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
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1 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
2 from Covered Products manufactured, distributed, or sold by Jo-Ann, Defendant Releasees or
3 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
4 Plaintiffs hereby specifically waive any and all rights and benefits which they now have, or in the
5 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
6 provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
8 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
10 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
11 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
12 DEBTOR OR RELEASED PARTY.

13 5.3 Jo-Ann waives any and all claims against Plaintiffs, their attorneys and other
14 representatives, for any and all actions taken, or statements made (or those that could have been
15 taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of
16 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
17 and with respect to Covered Products.

18 **6. INTEGRATION**

19 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
20 any and all prior negotiations and understandings related hereto shall be deemed to have been
21 merged within it. No representations or terms of agreement other than those contained herein exist
22 or have been made by any Party with respect to the other Party or the subject matter hereof.

23 **7. GOVERNING LAW**

24 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
27 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
28 to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Susan E. Smith
8 Beveridge & Diamond PC
9 456 Montgomery St., Ste. 1800
 San Francisco, CA 94104

10 And

11 For Plaintiffs:

12 Evan Smith
13 Brodsky Smith
 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

14 Any party, from time to time, may specify in writing to the other party a change of address to
15 which all notices and other communications shall be sent.

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

17 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and
19 the same document.

20 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
21 **APPROVAL**

22 10.1 Plaintiffs agree to comply with the requirements set forth in California Health &
23 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
24 Defendant agrees it shall support approval of such Motion.

25 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
26 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
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1 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
2 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

18 **14. AUTHORIZATION**

19 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood, and agree to all of the terms and conditions of this
21 document and certify that he or she is fully authorized by the Party he or she represents to execute
22 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
23 explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO:

Date: 11/3/24
By: [Signature]
EMA BELL

AGREED TO:

Date: 1/3/24
By: [Signature]
PRECILA BALABBO

AGREED TO:

Date: 11/13/23
By: [Signature]
JO-ANN STORES, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of Superior Court