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FILED
ALAMEDA COUNTY

MAY 25 2018

CLERK OF THE SUPERIOR COURT

BY: *[Signature]*

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

v.

THE BEAUTY COLLECTIVE, LLC,

Defendant.

Case No.: RG17882217

CONSENT JUDGMENT

Judge: Paul D. Herbert

Dept.: 20

Hearing Date: May 25, 2018

Hearing Time: 3:00 PM

Reservation #: R-1940025

APR - 6 2018

BY FAX

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Ema Bell
3 acting on behalf of the public interest (hereinafter “Bell”) and The Beauty Collective, LLC,
4 (hereinafter “Beauty Collective”), with Bell and Beauty Collective collectively referred to as the
5 “Parties” and each of them as a “Party.” Bell is an individual residing in California who seeks to
6 promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Bell alleges that Beauty
8 Collective is a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Bell alleges that Beauty Collective has exposed
11 individuals to Di(2-ethylhexyl)phthalate (“DEHP”) from cosmetic bags without providing clear
12 and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical
13 known to the State of California to cause reproductive toxicity and cancer.

14 **1.3 Notices of Violation/Complaint.** On or about August 17, 2017, Bell served Beauty
15 Collective and various public enforcement agencies with a document entitled “60-Day Notice of
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Beauty
17 Collective was in violation of Proposition 65 for failing to warn consumers and customers that the
18 cosmetic bags exposed users in California to DEHP. No public enforcer has brought and is
19 diligently prosecuting the claims alleged in the Notice. On November 13, 2017, Bell filed a
20 complaint in the matter as captioned above (“Complaint”).

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Beauty Collective as to the allegations contained in the complaint filed in this
23 matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
24 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
25 resolution of all claims which were or could have been raised in the Complaint based on the facts
26 alleged therein and/or in the Notice.

1 1.5 Beauty Collective denies the material allegations contained in Bell's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Beauty Collective of any fact, finding, issue of law, or
4 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
5 admission by Beauty Collective of any fact, finding, conclusion, issue of law, or violation of law,
6 such being specifically denied by Beauty Collective. However, this Section shall not diminish or
7 otherwise affect the obligations, responsibilities, and duties of Beauty Collective under this Consent
8 Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means cosmetic bags that have
11 been distributed, sold and/or offered for sale in California by Beauty Collective, and that contain
12 any of the following chemicals: DEHP, Di-isodecyl phthalate (DIDP); Diisononyl Phthalate
13 (DINP); Butyl benzyl phthalate (BBP), Di-n-hexyl Phthalate (DnHP) and Di-n-butyl Phthalate
14 (DBP) ("Listed Phthalates").

15 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
16 entered as a Judgment of the Court.

17 **3. INJUNCTIVE RELIEF: WARNINGS**

18 3.1 Commencing ninety (90) days after the Effective Date, Beauty Collective shall not
19 manufacture or purchase for sale in California any Covered Product that contains more than 1,000
20 parts per million Listed Phthalates, unless the Covered Product is accompanied by either of the
21 following warning(s), or any other warning message that complies with 27 Cal. Code Regs. § 25603
22 (effective August 30, 2018):

23 "WARNING: This product contains a chemical known to the State of California to cause
24 cancer, birth defects and other reproductive harm."

25 Or

26 "WARNING: This product can expose you to chemicals including Di(2-ethylhexyl)
27 phthalate (DEHP), which is known to the State of California to cause cancer and birth
28

1 defects or other reproductive harm. For more information go to
2 www.P65Warnings.ca.gov.”

3 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
4 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
5 on the packaging, labeling, or instruction booklet and displayed with such conspicuousness, as
6 compared with other words, statements, or designs as to render it likely to be read and understood
7 by an ordinary individual under customary conditions of purchase or use.

8 **4. MONETARY TERMS: PAYMENT OF THE CIVIL PENALTY AND**
9 **REIMBURSEMENT OF ATTORNEYS FEES AND COSTS**

10 4.1 **Attorney Fees.** Beauty Collective shall pay \$21,000.00 to Brodsky & Smith, LLC
11 (“Brodsky Smith”) as complete reimbursement for Plaintiff Bell’s attorneys’ fees and costs incurred
12 as a result of investigating, bringing this matter to Beauty Collective’s attention, litigating and
13 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
14 of Civil Procedure section 1021.5.

15 4.2 **Civil Penalty.** Beauty Collective shall pay a Civil Penalty of \$2,000.00 pursuant to
16 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
17 & Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of
18 Environmental Health Hazard Assessment and the remaining 25% of the Civil Penalty remitted to
19 Bell, as provided by California Health & Safety Code § 25249.12(d).

20 4.3 **Method of Payment.** Within ten (10) business days of the Effective Date, Beauty
21 Collective shall make a wire transfer payment to Brodsky & Smith, LLC in the amount of
22 \$23,000.00 as full and final satisfaction of all monies due and owing pursuant to this Consent
23 Judgment. Payment owed to Brodsky & Smith, LLC pursuant to this Section shall be delivered to
24 the following wire payment address:

25 Bank of America, N.A.
26 100 West 33rd Street
27 New York, NY 10001
28 ABA Routing No. 026009593
[International Banks can use SWIFT- BIC: BOFAUS3N]
Account Name: Merrill Lynch

Account No. 6550113516
Ref: For Final Credit 870-07119 Brodsky & Smith, LLC

4.3.1 Within fourteen (14) business days of the Effective Date, Brodsky & Smith, LLC shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

5. RELEASE OF ALL CLAIMS

5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting in the public interest, and Beauty Collective and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members, including but not limited to The TJX Companies, Inc. and each of its subsidiaries and affiliates ("Downstream Defendant Releasees"), of all claims for violations of Proposition 65 based on exposure to Listed Phthalates from Covered Products as set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by Beauty Collective prior to the Effective

1 Date. Compliance with the terms of this consent judgment constitutes compliance with Proposition
2 65 with regard to the Covered Products.

3 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
4 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,
5 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
6 and releases any Beauty Collective, Defendant Releasees, and Downstream Defendant Releasees
7 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
8 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
9 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
10 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
11 from Covered Products manufactured distributed or sold by Beauty Collective or Defendant
12 Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell hereby
13 specifically waives any and all rights and benefits which she now has, or in the future may have,
14 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides
15 as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
18 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
19 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
20 THE DEBTOR.

21 5.3 Beauty Collective waives any and all claims against Bell, her attorneys and other
22 representatives, for any and all actions taken or statements made (or those that could have been
23 taken or made) by Bell and her attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and/or with respect to Covered Products.

26 6. INTEGRATION

27 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
28 any and all prior negotiations and understandings related hereto shall be deemed to have been

merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

7. GOVERNING LAW

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

8. NOTICES

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

For Beauty Collective:

Tim Cunningham
CEO
The Beauty Collective LLC
PO Box 31605, Auckland 0741 New Zealand
tim@qvs.co.nz

With a copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower St.
Forty First Floor
Los Angeles, CA 90071
jeff.margulies@nortonrosefulbright.com

And

For Bell:

Evan Smith
Brodsky & Smith, LLC
2 Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
esmith@brodskysmith.com

Any party, from time to time, may specify in writing to the other party a change of address to

1 which all notices and other communications shall be sent.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

3 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
4 which shall be deemed an original, and all of which, when taken together, shall constitute one and
5 the same document.

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

8 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
9 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
10 Beauty Collective agrees it shall support approval of such Motion.

11 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
12 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
13 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
14 30-days, the case shall proceed on its normal course.

15 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
16 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
17 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
18 its normal course on the trial court's calendar.

19 **11. MODIFICATION**

20 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
21 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

22 **12. ATTORNEY'S FEES**

23 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
24 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
25 the unsuccessful party has acted with substantial justification. For purposes of this Consent
26 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
27 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.
28

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

13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date:

Date:

14 February 2018

By:

By:

EMA BELL

DEADLY COLLECTIVE LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

Judge of Superior Court

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

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

AGREED TO:

AGREED TO:

Date:

4/5/18

Date:

By:


EMMA BELL


By:

BEAUTY COLLECTIVE, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

5/25/2018


Judge of Superior Court