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**FILED**  
ALAMEDA COUNTY

JUN 22 2021

CLERK OF THE SUPERIOR COURT  
By Pam Williams  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 v.

14 ROSS STORES, INC.,

15 Defendant.

Case No.: RG19031366

**CONSENT JUDGMENT**

Judge: Evelio M. Grillo

Dept.: 15

Hearing Date: June 22, 2021

Hearing Time: 1:30 PM

Reservation #: R-2255008

1. **INTRODUCTION**

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

9           1.2     **Allegations and Representations.** Bell alleges that Defendant has exposed  
10 individuals to di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate (DINP) from its sales of  
11 are Minky Accessories Purses and Minky Accessories Fanny Packs without providing a clear and  
12 reasonable exposure warning pursuant to Proposition 65. DEHP is listed pursuant to Proposition  
13 65 as a chemical known to the State of California to cause cancer and reproductive toxicity. DINP  
14 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

15           1.3     **Notices of Violation/Complaints.** On or about August 27, 2018 (purse) and  
16 November 5, 2019 (fanny pack) Bell served Ross and various public enforcement agencies with  
17 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)  
18 (the “Notices”), alleging that Defendant violated Proposition 65 for failing to warn consumers and  
19 customers that use of Minky Accessories Purses (DINP) and Minky Accessories Fanny Packs  
20 (DEHP) expose users in California to DEHP or DINP. No public enforcer has brought and is  
21 diligently prosecuting the claims alleged in the Notices. On August 15, 2019, Bell filed a complaint  
22 (“Complaint”) in the matter. On March 30, 2021, Bell filed an amended complaint (“Amended  
23 Complaint”) in the matter. Collectively, the Complaint and Amended Complaint will be referred to  
24 herein as (the “Action.”)

25           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
26 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that  
27 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
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1 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
2 claims which were or could have been raised in the Action based on the facts alleged therein and/or  
3 in the Notice.

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

11 **2. DEFINITIONS**

12 2.1 **Minky Purses.** The term "Minky Purses" means Minky Accessories Purse with  
13 style number BA-997 manufactured by Minky Trading, Inc. and sold and/or offered for sale in  
14 California by Ross.

15 2.2 **Minky Fanny Packs.** The term "Minky Fanny Packs" means Minky Accessories  
16 Fanny Pack with style number BA-1252 manufactured by Minky Trading, Inc. and sold and/or  
17 offered for sale in California by Ross

18 2.3 **Covered Products.** The term "Covered Products" means Minky Purses and Minky  
19 Fanny Packs.

20 2.4 **Listed Chemical.** The term "Listed Chemical" shall mean DINP as to Minky Purses  
21 and DEHP as to Minky Fanny Packs.

22 2.5 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
23 entered as a Judgment of the Court.

24 **3. INJUNCTIVE RELIEF: WARNINGS**

25 3.1 **Reformulation of Covered Products.** As of the Effective Date, Ross shall not  
26 purchase Covered Products for sale in California unless the Products are: (a) Reformulated Products  
27 pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to  
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1 §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated Product” is a  
2 Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning  
3 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

4       **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
5 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of the Listed  
6 Chemical when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies  
7 3580A and 8270C or other methodology utilized by federal or state government agencies for the  
8 purpose of determining the phthalate content in a solid substance.

9       **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
10 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
11 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant purchases for sale in  
12 California that is not a Reformulated Product. There shall be no obligation for Defendant to provide  
13 a warning for Covered Products that enter the stream of commerce prior to the Effective Date. The  
14 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),  
15 respectively:

16       (a) **Warning.:**

17       For Minky Purses:

18       ⚠ **WARNING:** This product can expose you to chemicals including Diisononyl  
19 Phthalate (DINP), which is known to the State of California to cause cancer. For  
20 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

21       For Minky Fanny Packs:


22       ⚠ **WARNING:** This product can expose you to chemicals including di(2-  
23 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
24 cancer and birth defects or other reproductive harm. For more information go to  
25 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

26       (b) **Alternative Warning.:**

27       For Minky Purses:

28       ⚠ **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1 For Minky Fanny Packs

2  **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

3 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
4 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
5 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
6 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
7 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
8 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
9 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
10 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
11 with other words, statements, or designs as to render it likely to be read and understood by an  
12 ordinary individual under customary conditions of purchase or use. A warning may be contained  
13 in the same section of the packaging, labeling, or instruction booklet that states other safety  
14 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
15 those other safety warnings.

16 If Ross sells Covered Products via an internet website to customers located in California,  
17 the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
18 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the  
19 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
20 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
21 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
22 immediately following the display, description, price, or checkout listing of the Covered Products,  
23 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
24 it with the product(s) to which the warning applies.

25 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
26 compliance with the warning requirements of this Consent Judgment by either adhering to §§ 3.3  
27 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the State  
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1 of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective  
2 Date.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Ross shall pay \$2,000.00 as a Civil Penalty pursuant to Health and  
5 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
6 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
7 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

8 4.1.1 Within fifteen (15) business days of the Effective Date, Ross shall issue  
9 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;  
10 and to (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. Payment owed to  
11 Bell pursuant to this Section shall be delivered to the following payment address:

12 Evan J. Smith, Esquire  
13 Brodsky & Smith, LLC  
14 Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

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

25 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address  
26 set forth above as proof of payment to OEHHA.

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1           4.2     **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, Ross shall  
2 pay \$20,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Bell's  
3 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Ross attention,  
4 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,  
5 pursuant to Code of Civil Procedure § 1021.5.

6           **5.     RELEASE OF ALL CLAIMS**

7           5.1     This Consent Judgment is a full, final, and binding resolution between Bell acting  
8 on her own behalf, and on behalf of the public interest, and Ross, and its parents, shareholders,  
9 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,  
10 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,  
11 successors and assigns ("Defendant Releasees"), and all entities to whom they directly or indirectly  
12 distribute or sell Covered Products, including but not limited to, customers, licensors, licensees  
13 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for  
14 violations of Proposition 65 based on exposure to DEHP and/or DINP from Covered Products as  
15 set forth in the Notices, with respect to any Covered Products purchased for sale in California by  
16 Ross prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall have  
17 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,  
18 her, or its interests or the public interest shall be permitted to pursue and/or take any action with  
19 respect to any violation of Proposition 65 that was alleged in the Action, or that could have been  
20 brought pursuant to the Notices against Ross and/or the Downstream Releasees of the Covered  
21 Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment  
22 constitutes compliance with Proposition 65 with regard to the Covered Products.

23           5.2     In addition to the foregoing, Bell, on behalf of herself, her past and current agents,  
24 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,  
25 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action  
26 and releases Ross, Defendant Releasees, and Downstream Releasees from any and all manner of  
27 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,  
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1 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature  
2 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with  
3 respect to any alleged violations of Proposition 65 related to or arising from Covered Products  
4 distributed or sold by Ross, Defendant Releasees or Downstream Releasees. With respect to the  
5 foregoing waivers and releases in this paragraph, Bell hereby specifically waives any and all rights  
6 and benefits which she now has, or in the future may have, conferred by virtue of the provisions of  
7 § 1542 of the California Civil Code, which provides as follows:

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

12 **6. ENFORCEMENT**

13           6.1     The terms of this Consent Judgment shall be enforced exclusively by the Parties  
14 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
15 California, County of Alameda, giving the required notice, enforce the terms and conditions  
16 contained in this Consent Judgment. A Party may enforce any of the terms and conditions of this  
17 Consent Judgment only after that Party first provides 60 days' notice to the Party allegedly failing  
18 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such  
19 Party's failure to comply.

20           6.2     Notice of Violation.   Prior to bringing any motion, order to show cause, or other  
21 proceeding to enforce the terms of this Consent Judgment, Bell shall provide a Notice of Violation  
22 ("NOV") to Ross. The NOV shall include the date(s) the alleged violation(s) was observed and the  
23 location at which the Covered Product was offered for sale and shall be accompanied by all test  
24 data obtained by Bell regarding the Covered Products, and any evidence or support of the  
25 allegations in the NOV.

26           6.3     Bell shall take no further action regarding the alleged violation if, within 60 days of  
27 receiving such NOV, Ross serves a notice that meets one of the following conditions:  
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1                   6.3.1 The Covered Products purchased by Ross for sale in California before the  
2 Effective Date, or

3                   6.3.2 Since receiving the NOV, Ross has taken corrective action by either (i)  
4 removing the Covered Products identified in the NOV from sale in California, or (ii) providing a  
5 clear and reasonable warning for the Covered Products identified in the NOV pursuant to Section  
6 3 above with written confirmation to Bell.

7                   **7. INTEGRATION**

8                   7.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
9 any and all prior negotiations and understandings related hereto shall be deemed to have been  
10 merged within it. No representations or terms of agreement other than those contained herein exist  
11 or have been made by any Party with respect to the other Party or the subject matter hereof.

12                   **8. GOVERNING LAW**

13                   8.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California and apply within the State of California. In the event that Proposition 65 is repealed or  
15 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
16 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
17 to the extent that, Covered Products are so affected.

18                   **9. NOTICES**

19                   9.1 Unless specified herein, all correspondence and notices required to be provided  
20 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
21 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
22 by the other party at the following addresses:

23 For Defendant:

24                   General Counsel of Ross Stores, Inc.  
25                   1372 Broadway  
26                   New York, NY 10018

27                   With copy to:

28                   Jeffrey Margulies

1 Norton Rose Fulbright US LLP  
2 555 South Flower Street, Forty-First Floor  
3 Los Angeles, CA 90071

3 And

4 For Bell:

5 Evan Smith  
6 Brodsky & Smith, LLC  
7 9595 Wilshire Blvd., Ste. 900  
8 Beverly Hills, CA 90212

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

11 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

12 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
13 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
14 the same document.

15 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
16 **APPROVAL**

17 11.1 Bell agrees to comply with the requirements set forth in California Health & Safety  
18 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.

19 11.2 This Consent Judgment shall not be effective until it is approved and entered by the  
20 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
21 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
22 days, the case shall proceed on its normal course.

23 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
24 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
25 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
26 its normal course on the trial court's calendar.

27 **12. MODIFICATION**

28 12.1 This Consent Judgment may be modified only by further stipulation of the Parties  
and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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**13. ATTORNEY'S FEES**

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

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

**14. RETENTION OF JURISDICTION**

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

**15. AUTHORIZATION**

15.1 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 certify 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: \_\_\_\_\_  
By: \_\_\_\_\_  
EMA BELL

Date: 4/19/21  
By: [Signature]  
ROSS STORES, INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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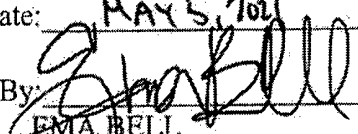
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**AGREED TO:**

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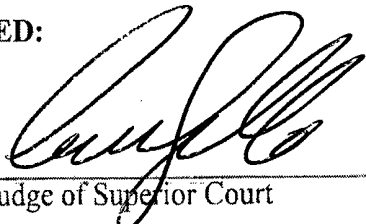
Date: MAY 5, 2021  
By:   
EMMA BELL

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
ROSS STORES, INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

**JUN 22 2021**

Dated: \_\_\_\_\_

  
Judge of Superior Court