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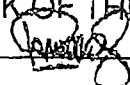
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Attorneys for Plaintiff

FILED
San Francisco County Superior Court

MAY 30 2023

CLERK OF THE COURT

BY:  Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

EMA BELL,

Plaintiff,

v.

TONYMOLY USA, LLC, &
ULTA BEAUTY, INC.,

Defendants.

Case No.: CGC-22-599233.

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: May 30, 2023

Hearing Time: 9:30 AM

Complaint Filed: April 19, 2022

1 **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 TONYMOLY USA LLC (“TONYMOLY”
4 or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them
5 as a “Party.” Bell is an individual residing in California that seeks to promote awareness of
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. TONYMOLY is alleged to be a person in the course
8 of doing business for purposes 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) from its sales of its TONYMOLY Minions To
11 Go Sets without providing a clear and reasonable exposure warning pursuant to Proposition 65.
12 DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer
13 and reproductive toxicity.

14 **1.3 Notice of Violation/Complaint.** On or about April 20, 2021, Bell alleges that it
15 served TONYMOLY USA LLC, TONYMOLY CO., LTD., Ulta Salon, Cosmetics & Fragrance,
16 Inc. (incorrectly named in the Notice as Ulta Beauty, Inc.), and various public enforcement agencies
17 with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
18 §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn
19 consumers and customers that use of TONYMOLY Minions To Go Sets expose users in California
20 to DEHP. Defendant disputes that TONYMOLY USA LLC or TONYMOLY CO., LTD. received
21 service by Bell of the Notice. No public enforcer has brought and is diligently prosecuting the
22 claims alleged in the Notice. On April 19, 2022, Bell filed a complaint (the “Complaint”) in the
23 matter.

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

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

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means To Go Sets that are
12 manufactured, distributed and/or offered for sale in California by TONYMOLY and/or Ultra Salon,
13 Cosmetics & Fragrance, Inc.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
18 thereafter, Covered Products shall either: (a) be Reformulated Products pursuant to § 3.2, below;
19 or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.
20 For purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in
21 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
22 and 3.4 shall not apply to any Reformulated Product.

23 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose
27 of determining the phthalate content in a solid substance.
28

1 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
2 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
3 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
4 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
5 Defendant to provide a warning for Covered Products that are manufactured prior to the Effective
6 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
7 3.3(a) or (b), respectively:

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

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

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

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

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

1 In addition to affixing the **Warning or Alternative Warning** to the Covered Product's
2 packaging or labeling, the **Warning or Alternative Warning** shall be posted on websites where
3 TONYMOLY offers Covered Products for sale to consumers in California. The requirements of
4 this Section shall be satisfied if the **Warning or Alternative Warning**, or a clearly marked
5 hyperlink using the word "**WARNING,**" appears on the product display page, or by otherwise
6 prominently displaying the warning to the purchaser prior to completing the purchase. To comply
7 with this Section, TONYMOLY shall (a) post the **Warning or Alternative Warning** on its own
8 website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b)
9 if it does not have the ability to post the **Warning or Alternative Warning** on the websites of its
10 third-party internet sellers, provide such sellers with written notice in accordance with Title 27,
11 California Code of Regulations, Section 25600.2.

12 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
14 Judgment or by complying with warning requirements adopted by the State of California's Office
15 of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Product and
16 the exposure at issue after the Effective Date.

17 **4. MONETARY TERMS**

18 **4.1 Civil Penalty.** TONYMOLY shall pay \$2,000.00 as a Civil Penalty pursuant to
19 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
20 & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
21 remaining 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety
22 Code § 25249.12(d).

23 **4.1.1** Within ten (10) days of the Effective Date, TONYMOLY shall issue two
24 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
25 to (b) "Ema Bell" in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall
26 be delivered to the following payment address:

27 Evan J. Smith, Esquire
28 Brodsky & Smith

1 Two Bala Plaza, Suite 805
2 Bala Cynwyd, PA 19004

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

5 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95814

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

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, TONYMOLY shall
20 pay \$23,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Bell's
21 attorneys' fees and costs incurred as a result of investigating, bringing this matter to TONYMOLY
22 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
23 interest, pursuant to Code of Civil Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
26 on her own behalf, and on behalf of the public interest, and TONYMOLY, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, 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 (including but not limited to Ulta Salon, Cosmetics & Fragrance, Inc.), franchisees, and

1 cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
2 based on exposure to DEHP from use of the Covered Products as set forth in the Notice and the
3 Complaint, with respect to any Covered Products manufactured, distributed, or sold by
4 TONYMOLY prior to the Effective Date. It is the Parties' intention that this Consent Judgment
5 shall have preclusive effect such that no other actions by private enforcers, whether purporting to
6 act in his, her, or its interests or the public interest shall be permitted to pursue and/or take any
7 action with respect to any violation of Proposition 65 based on exposure to DEHP that was alleged
8 in the Complaint, or that could have been brought pursuant to the Notice against TONYMOLY
9 and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims").

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

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
27 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
28 DEBTOR OR RELEASED PARTY.

27 5.3 TONYMOLY waives any and all claims against Bell, her attorneys and other
28 representatives, for any and all actions taken, or statements made (or those that could have been

1 taken or made) by Bell and her attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
3 and/or with respect to DEHP exposure from Covered Products.

4 **6. INTEGRATION**

5 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
6 prior negotiations and understandings related hereto shall be deemed to have been merged within
7 it. No representations or terms of agreement other than those contained herein exist or have been
8 made by any Party with respect to the other Party or the subject matter hereof.

9 **7. GOVERNING LAW**

10 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
12 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
13 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
14 that, Covered Products are so affected.

15 **8. NOTICES**

16 8.1 Unless specified herein, all correspondence and notices required to be provided
17 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
18 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
19 by the other party at the following addresses:

20 For Defendant:

21 Rebecca T. Greenberg
22 Law Offices of Rebecca T. Greenberg
23 433 N. Doheny Drive, #202
Beverly Hills, CA 90210

24 And

25 For Bell:

26 Evan Smith
27 Brodsky & Smith
9595 Wilshire Blvd., Ste. 900
28 Beverly Hills, CA 90212

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

20 **11. MODIFICATION**

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

23 **12. ATTORNEY'S FEES**

24 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
25 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

26 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
27 pursuant to law.

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13. RETENTION OF JURISDICTION

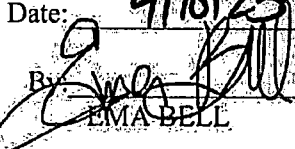
13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

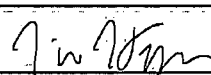
14. AUTHORIZATION

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 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: 4/10/23
By: 
EMMA BELL

Date: 12/19/2022
By: 
TONYMOLY USA LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 5/30/23


Judge of Superior Court

RICHARD B. ULMER