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San Francisco County Superior Court

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CLERK OF THE COURT

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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 **EMA BELL,**
12 **Plaintiff,**

13 **v.**

14 **MACY'S, INC.,**
15 **Defendant.**

Case No.: CGC-22-598914

CONSENT JUDGMENT

Judge: Richard B. Uimer
Dept.: 302
Hearing Date: January 19, 2024
Hearing Time: 9:30 AM
Complaint Filed: March 29, 2022

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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 Macy’s, Inc. (“Macy’s” 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. Macy’s 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) from its sales of *Judy*® first aid bags, #
11 B085Z16GW4, without providing a clear and reasonable exposure warning pursuant to Proposition
12 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to
13 cause cancer and birth defects or other reproductive harm.

14 **1.3 Notice of Violation/Action.** On or about April 28, 2021, Bell served Macy’s and
15 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
16 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
17 Proposition 65 for failing to warn consumers and customers that use of *Judy*® first aid bags, #
18 B085Z16GW4, expose users in California to DEHP. No public enforcer has brought and is
19 diligently prosecuting the claims alleged in the Notice. On March 29, 2022, Bell filed a complaint
20 (the “Complaint”). On November 9, 2023, Bell filed a first amended complaint (the “First Amended
21 Complaint”). The Complaint and the First Amended Complaint are collectively referred to herein
22 as, the “Action.”

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

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means *Judy*® first aid bags, UPC
11 860003575123, 860003575109, and 860003575130, that are manufactured, distributed, shipped
12 into California and offered for sale in California by Macy's that expose users to DEHP.

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
14 entered as a Judgment of the Court.

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

16 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
17 thereafter, Covered Products that Macy's directly manufactures, imports, distributes, sells, or offers
18 for sale in California shall either be: (a) reformulated Products pursuant to § 3.2, below; or (b)
19 labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
20 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.

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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, 3.4, and 3.5 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 enter the stream of commerce prior to
6 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
7 described in §§ 3.3(a) or (b), respectively:

8 **(a) Warning:**

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
www.P65Warnings.ca.gov.

12 **(b) Alternative Warning:**

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

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

27 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
28 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where

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

12 **3.5 Compliance with Warning Regulations.** If warnings are required for Covered
13 Products pursuant to § 3.1, Macy's shall be deemed to be in compliance with this Consent Judgment
14 by either adhering to §§ 3.3 and 3.4 of this Consent Judgment or by complying with warning
15 regulations adopted by OEHHA applicable to the Covered Product and exposures at issue after the
16 Effective Date. If warnings are required for Covered Products pursuant to § 3.1, Macy's shall
17 comply with 27 Cal. Code Regs. § 25602 subd. (d). If "consumer information," as that term is
18 defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from
19 time to time, is provided in a foreign language, Macy's shall provide the **Warning** or **Alternative**
20 **Warning** in the foreign language in accordance with applicable warning regulations adopted by
21 OEHHA.

22 **4. MONETARY TERMS**

23 **4.1 Civil Penalty.** Macy's shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
24 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
25 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
26 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

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1 4.1.1 Within ten (10) days of the Effective Date, Macy's shall issue two separate
2 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b) "Ema
3 Bell" in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be delivered
4 to the following payment address:

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

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

11 For United States Postal Service Delivery:

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

17 For Non-United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 1001 I Street
22 Sacramento, CA 95814

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

25 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Macy's shall pay
26 \$15,500.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
27 incurred as a result of investigating, bringing this matter to the attention of Macy's, litigating and
28 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
of Civil Procedure § 1021.5.

5. **RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
on her own behalf, and on behalf of the public interest, and Macy's, and its parents, shareholders,
members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,

1 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
2 successors and assigns ("Defendant Releasees"), and all entities to whom they directly or indirectly
3 distribute or sell Covered Products, including but not limited to customers, licensors, licensees
4 retailers, including but not limited to its parents, subsidiaries, and affiliates, franchisees, and
5 cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
6 based on exposure to DEHP from use of the Covered Products manufactured, distributed, or sold
7 by Macy's prior to the Effective Date as set forth in the Notice. It is the Parties' intention that this
8 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
9 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
10 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
11 DEHP from use of the Covered Products that was alleged in the Action, or that could have been
12 brought pursuant to the Notice against Macy's and the Downstream Releasees ("Proposition 65
13 Claims"). Macy's compliance with the terms of this Consent Judgment constitutes compliance with
14 Proposition 65 by Macy's with regard to exposure to DEHP from use of the Covered Products.

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

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 5.3 Macy's waives any and all claims against Bell, her attorneys and other
6 representatives, for any and all actions taken, or statements made (or those that could have been
7 taken or made) by Bell and her attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
9 and with respect to Covered Products.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
12 any and all prior negotiations and understandings related hereto shall be deemed to have been
13 merged within it. No representations or terms of agreement other than those contained herein exist
14 or have been made by any Party with respect to the other Party or the subject matter hereof.

15 **7. GOVERNING LAW**

16 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California and apply within the State of California. In the event that Proposition 65 is repealed or
18 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
19 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
20 to the extent that, Covered Products are so affected.

21 **8. NOTICES**

22 8.1 Unless specified herein, all correspondence and notices required to be provided
23 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
24 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
25 by the other party at the following addresses:

26 For Defendant:

27 Macy's
28 serviceofprocess@macys.com

with copy to:

Lauren Shoor
Norton Rose Fulbright US LLP

1 555 South Flower St., 41st Fl.
2 Los Angeles, CA 90071
3 Lauren.shoor@nortonrosefulbright.com

4 And

5 For Bell:

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

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

13 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
14 which shall be deemed an original, and all of which, when taken together, shall constitute one and
15 the same document.

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

18 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
19 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.

20 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
21 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
22 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
23 days, the case shall proceed on its normal course.

24 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
25 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
26 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
27 its normal course on the trial court's calendar.

28 **11. MODIFICATION**

11.1 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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12. ATTORNEY'S FEES

12.1 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.

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

13. RETENTION OF JURISDICTION

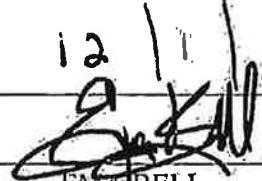
13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

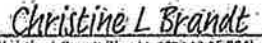
14. AUTHORIZATION

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 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: 12/11/23
By: 
EMMA BELL

Date: Nov 14, 2023
By: 
CHRISTINE L BRANDT
MACY'S, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 5 Feb. 2024


Judge of Superior Court
ROCHELLE C. EAST