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FILED
Superior Court of California
County of San Francisco

FEB 09 2024

CLERK OF THE COURT
By: Victor DA FONSECA
Deputy Clerk

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

11 EMA BELL,

12 Plaintiff,

13 v.

14 BEAUTY TREATS INTERNATIONAL CO.,
15 INC., BURLINGTON STORES, INC.,
16 BURLINGTON COAT FACTORY OF TEXAS,
17 INC.,

18 Defendant.

Case No.: CGC-23-606726

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: February 9, 2024
Hearing Time: 9:30 AM
Complaint Filed: May 25, 2023

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 Beauty Treats International Co.,
4 Inc. (“Beauty Treats” or “Defendant”) with Bell and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Bell is an individual residing in California that 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 Treats
8 is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety
9 Code §§ 25249.6 et seq.

10 1.2 **Allegations.** Bell alleges that Defendant has exposed individuals to
11 diethanolamine (“DEA”) from its sales of *Beauty Treats*® double date lush mascaras/eyeliners,
12 UPC # 676768825027, without providing a clear and reasonable exposure warning pursuant to
13 Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to the State of
14 California to cause cancer.

15 1.3 **Notice of Violation/Action.** On or about June 7, 2022, Bell served Burlington
16 Stores, Inc., Burlington Coat Factory of Texas, Inc. (collectively, “Burlington”), Designs by Dori,
17 Beauty Treats and various public enforcement agencies with documents entitled “60-Day Notice
18 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
19 Defendant violated Proposition 65 for failing to warn consumers and customers that use of *Beauty*
20 *Treats*® double date lush mascaras/eyeliners, UPC # 676768825027, expose users in California
21 to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the
22 Notice. On May 25, 2023, Bell filed a complaint (the “Complaint”).

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

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means *Beauty Treats*® double
11 date lush mascaras/eyeliners, UPC # 676768825027, containing DEA that are manufactured,
12 distributed, or shipped into California by Beauty Treats and offered for sale in California by
13 Beauty Treats or any Downstream Releasee (as defined below) or defendant in the Complaint.

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

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

17 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
18 thereafter, Beauty Treats shall not sell or manufacture, import, or distribute any Covered Products
19 intended for retail sale in California that are not either: (a) Reformulated Products pursuant to
20 § 3.2, below; or (b) labeled with a clear and reasonable exposure warning as set forth in this
21 §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a
22 Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning
23 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product. There shall
24 be no obligation for Defendant or Downstream Releasees (defined below) to provide a warning
25 for Covered Products that enter the stream of commerce prior to the Effective Date.

26 3.2 **DEA Reformulation Standard.** "Reformulated Product" shall mean Covered
27 Product with DEA content that is below the Reporting Limit (defined herein) when analyzed
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1 pursuant to liquid chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled
2 mass-spectroscopy (ICP-MS) or other method of analysis utilized by the International
3 Organization for Standardization (ISO) for qualitative and quantitative screening of cosmetics and
4 cosmetic raw materials.

5 3.2.1 **Reporting Limit.** The Covered Product "Reporting Limit"¹ is 200 mg/kg.

6 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
7 thereafter, Beauty Treats shall provide a clear and reasonable exposure warning as set forth in this
8 §§ 3.3 and 3.4 for all Covered Products that Defendant manufacturers or imports for sale to
9 wholesale or retail businesses in California that is not a Reformulated Product. The warning shall
10 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

11 (a) **Warning.** The "**Warning**" shall consist of the statement:

12 **⚠ WARNING:** This product can expose you to chemicals including
13 diethanolamine (DEA), which is known to the State of California to cause cancer.
14 For more information go to www.P65Warnings.ca.gov.

15 (b) **Alternative Warning:** Beauty Treats may, but is not required to, use the
16 alternative short-form warning as set forth in this § 3.1(b) ("**Alternative Warning**") as follows:

17 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

18 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the
19 word "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning
20 symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow
21 equilateral triangle with a black outline, except that if the sign or label for the Covered Product
22 does not use the color yellow, the symbol may be in black and white. The symbol must be in a
23 size no smaller than the height of the word "**WARNING:**". The **Warning** or **Alternative**
24 **Warning** shall be affixed to or printed on the Covered Product's packaging or labeling, or on a
25 placard, shelf tag, sign or electronic device or automatic process, providing that the **Warning** or

26 ¹ The Reporting Limit is the lowest concentration at which DEA can be reported in a
27 sample of a Covered Product by a commercially reasonable accredited testing laboratory
28 employing LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative
and quantitative screening of cosmetics and cosmetic raw materials.

1 **Alternative Warning** is displayed with such conspicuousness, as compared with other words,
2 statements, or designs as to render it likely to be read and understood by an ordinary individual
3 under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be
4 contained in the same section of the packaging, labeling, or instruction booklet that states other
5 safety warnings, if any, concerning the use of the Covered Product and shall be at least the same
6 size as those other safety warnings. Where a sign or label used to provide a **Warning** includes
7 consumer information about a product in a language other than English, the **Warning** must also
8 be provided in that language in addition to English.

9 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
10 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
11 Beauty Treats offers Covered Products for sale to consumers in California. The requirements of
12 this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked
13 hyperlink using the word "**WARNING**" or similar language, appears on the product display page,
14 or by otherwise prominently displaying the warning to the purchaser prior to completing the
15 purchase. To comply with this Section, Beauty Treats shall (a) post the **Warning** or **Alternative**
16 **Warning** on its own website and, if it has the ability to do so through reasonable efforts, on the
17 websites of its third-party internet sellers; and (b) if it does not have the ability to post the
18 **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such
19 sellers with written notice in accordance with Title 27, California Code of Regulations,
20 § 25600.2. Third-party internet sellers of the Covered Product that have been provided with
21 written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not
22 released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

23 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
24 compliance with the warning requirements of this Consent Judgment by either adhering to §§ 3.3
25 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by
26 OEHHA applicable to the Covered Product and exposures at issue after the Effective Date.

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1 **4. MONETARY TERMS**

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

7 **4.1.1** Within ten (10) days after Plaintiff serves Notice of Entry of this Consent
8 Judgment, Beauty Treats shall issue two separate checks for the Civil Penalty payment to (a)
9 "OEHHA" in the amount of \$1,500.00; and to (b) "Ema Bell" in the amount of \$500.00. Payment
10 owed to Bell pursuant to this Section shall be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky Smith
13 Two Bala Plaza, Suite 805
14 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
21 P.O. Box 4010
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street
28 Sacramento, CA 95814

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

4.2 Attorneys' Fees. Within ten (10) days after Plaintiff serves Notice of Entry of this
Consent Judgment, Beauty Treats shall pay \$23,000.00 to Brodsky Smith as complete
reimbursement for Bell's attorneys' fees and costs incurred as a result of investigating, bringing

1 this matter to the attention of Beauty Treats, litigating and negotiating and obtaining judicial
2 approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
5 on her own behalf, and on behalf of the public interest, and Beauty Treats, and its parents,
6 shareholders, members, directors, officers, managers, employees, representatives, agents,
7 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
8 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
9 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
10 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
11 retailers (including without limitation Burlington and its parents, subsidiaries, and affiliates),
12 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of
13 Proposition 65 that were, or could have been, or could later be asserted against Defendant
14 Releasees or Downstream Releasees based on exposure to DEA from use of the Covered Products
15 or failure to warn as set forth in the Notice, with respect to any Covered Products
16 (i) manufactured, imported, distributed, or sold by Beauty Treats prior to the Effective Date or
17 (ii) sold or distributed by Downstream Releasees after the Effective Date (but which were
18 acquired by any such parties prior to the Effective Date). It is the Parties’ intention that this
19 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
20 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
21 pursue and/or take any action with respect to any violation of Proposition 65 based on failure to
22 warn regarding exposure to DEA from use of the Covered Products that was alleged in the
23 Complaint, or that could have been brought pursuant to the Notice against Beauty Treats,
24 Defendant Releasees, and/or the Downstream Releasees (“Proposition 65 Claims”). Beauty
25 Treats’ compliance with the terms of this Consent Judgment constitutes compliance with
26 Proposition 65 by Beauty Treats with regard to exposure to DEA from use of the Covered
27 Products, and Downstream Releasees that sell Reformulated Products or pass on the warnings
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1 provided by Beauty Treats in accordance with Sections 3.3–3.4 are likewise in compliance with
2 Proposition 65 with regard to exposure to DEA from use of 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 assignees, and *not* in her representative capacity,
5 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
6 action and releases Beauty Treats, Defendant Releasees, and Downstream Releasees from any
7 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
8 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
10 contingent, now or in the future, with respect to Covered Products manufactured, distributed, or
11 sold by Beauty Treats, Defendant Releasees or Downstream Releasees. With respect to the
12 foregoing waivers and releases in this paragraph, Bell hereby specifically waives any and all
13 rights and benefits which she now has, or in the future may have, conferred by virtue of the
14 provisions of § 1542 of the California Civil Code, which provides as follows:

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

19 5.3 Beauty Treats waives any and all claims against Bell, her attorneys and other
20 representatives, for any and all actions taken, or statements made by Bell and her attorneys and
21 other representatives, whether in the course of investigating claims or otherwise seeking
22 enforcement of Proposition 65 against it in this matter, and with respect to Covered Products.

23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein
27 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,
6 and to the extent that, Covered Products are so affected. In addition, if any safe harbor level is set
7 for DEA, Beauty Treats may comply with Proposition 65 by satisfying safe harbor.

8 **8. NOTICES**

9 8.1 Unless specified herein, all correspondence and notices required to be provided
10 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
11 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
12 by the other party at the following addresses:

13 For Defendant:

14 Beauty Treats International Co., Inc.
15 Attn: Ms. Terry Hsiao
16 1232 Factory Place
17 Los Angeles, CA 90013

18 *With a copy to:*

19 Jeffrey Parker
20 Sheppard Mullin
21 333 South Hope Street, 43rd floor
22 Los Angeles, CA 90071

23 For Bell:

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

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Bell agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by
11 the Court and shall be null and void if, for any reason, it is not approved by the Court. In such
12 case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached
13 within 30 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
16 Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall
17 proceed on its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either
21 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.

25 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
26 pursuant to law.

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1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4
5 **14. AUTHORIZATION**

6 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
7 their respective Parties and have read, understood, and agree to all of the terms and conditions of
8 this document and certify that he or she is fully authorized by the Party he or she represents to
9 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
10 Except as explicitly provided herein each Party is to bear its own fees and costs.

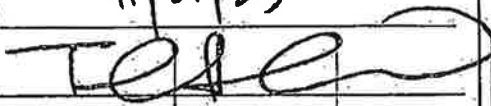
11 **AGREED TO:**

AGREED TO:

12
13 Date: _____

Date: 11/9/23

14
15 By: _____
EMA BELL

By: 
BEAUTY TREATS INTERNATIONAL
CO., INC.

16
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18
19 Dated: _____

Judge of Superior Court

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9 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
10 Except as explicitly provided herein each Party is to bear its own fees and costs.

11 **AGREED TO:**

AGREED TO:

12
13 Date: 12/22/23

Date: _____

14 By: 


By: _____

15 EMA BELL

16 BEAUTY TREATS INTERNATIONAL
17 CO., INC.

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

19 Dated: 9 Feb. 2024

20 
21 Judge of Superior Court

22 **ROCHELLE C. EAST**