

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Evan Smith (Bar No. SBN 242352)
BRODSKY SMITH
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212
Tel: (877) 534-2590
Fax: (310) 247-0160

Attorneys for Plaintiff

FILED
Superior Court of California
County of San Francisco

SEP 24 2024

CLERK OF THE SUPERIOR COURT
By Victor De Pineda Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

EMA BELL,

Plaintiff,

v.

CROSS BRANDS CONTRACT FILLING, LLC,
THE TJX COMPANIES, INC.,

Defendants.

Case No.: CGC-23-607542

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: September 24, 2024
Hearing Time: 9:30 AM
Complaint Filed: July 11, 2023

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 The TJX Companies, Inc. (“TJX” or
4 “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as
5 a “Party.” Bell is alleged to be an individual residing in California that seeks to promote awareness
6 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. TJX is alleged to be a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Bell alleges that TJX has exposed individuals to
10 diethanolamine (DEA) from its sale of Covered Products, as defined below, without providing a
11 clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed pursuant to
12 Proposition 65 as a chemical known to the State of California to cause cancer.

13 1.3 **Notice of Violation/Action.** On or about July 12, 2022, Bell served TJX and various
14 public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to
15 Health & Safety Code §25249.7(d) (the “Notice”), alleging that TJX violated Proposition 65 for
16 failing to warn consumers and customers that use of Covered Products expose users in California
17 to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the
18 Notice. On July 11, 2023, Bell filed the instant complaint (the “Complaint”).

19 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over TJX as to the allegations contained in the Complaint filed in this matter, that venue
21 is proper in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and
22 oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims
23 which were or could have been raised in the Complaint based on the facts alleged therein and in
24 the Notice.

25 1.5 TJX denies the material allegations contained in Bell’s Notice and Complaint and
26 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
27 construed as an admission by TJX of any fact, finding, issue of law, or violation of law; nor shall
28

1 compliance with this Consent Judgment constitute or be construed as an admission by TJX of any
2 fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by TJX.
3 However, this section shall not diminish or otherwise affect the obligations, responsibilities, and
4 duties of TJX under this Consent Judgment.

5 **2. DEFINITIONS**

6 2.1 **Covered Products.** The term "Covered Products" means *Sea & Ski*® coolest aoes,
7 Style Nos. 104300, 104474, 104295, 26095, and 26100 that are manufactured, distributed, shipped
8 into California and offered for sale in California by TJX.

9 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
10 entered as a Judgment by the Court.

11 **3. INJUNCTIVE RELIEF: WARNINGS**

12 3.1 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
13 thereafter, TJX shall not order any Covered Products for sale in California unless such Covered
14 Products are labeled with a clear and reasonable exposure warning as set forth in this §§ 3.1 and
15 3.2. There shall be no obligation for Defendant to provide a warning for Covered Products that
16 enter the stream of commerce prior to the Effective Date. The warning shall consist of either the
17 **Warning or Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

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

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

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

24 3.2 **A Warning or Alternative Warning** provided pursuant to § 3.1 must print the word
25 "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to
26 the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral
27 triangle with a black outline, except that if the sign or label for Covered Products does not use the
28

1 color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than
2 the height of the word "**WARNING:**". The **Warning** or **Alternative Warning** shall be affixed to
3 or printed on the Covered Products' packaging or labeling, or on a placard, shelf tag, sign or
4 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
5 displayed with such conspicuousness, as compared with other words, statements, or designs as to
6 render it likely to be read and understood by an ordinary individual under customary conditions of
7 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
8 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
9 the use of Covered Products and shall be at least the same size as those other safety warnings. If
10 "consumer information," as that term is defined in Title 27, California Code of Regulations, Section
11 25600.1(c) as it may be amended from time to time, is provided in a foreign language, TJX shall
12 provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
13 applicable warning regulations adopted by OEHHA.

14 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
15 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
16 TJX offers Products for sale to consumers in California. The requirements of this Section shall be
17 satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
18 "**WARNING,**" appears on the product display page, or by otherwise prominently displaying the
19 warning to the purchaser prior to completing the purchase. To comply with this Section, TJX shall
20 (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so,
21 on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the
22 **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such
23 sellers with written notice in accordance with Title 27, California Code of Regulations, § 25600.2.
24 Third-party internet sellers of Covered Products that have been provided with written notice in
25
26
27
28

1 accordance with Title 27, California Code of Regulations, § 25600.2 are not released in Section 5
2 of this Agreement if they fail to meet the warning requirements herein.

3 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
4 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
5 Judgment or by complying with warning regulations adopted by OEHHA applicable to Covered
6 Products and exposures within sixty (60) days after the Effective Date.

7 **4. MONETARY TERMS**

8 **4.1 Civil Penalty.** TJX shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
9 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
10 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
11 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

12 **4.1.1** Within fifteen (15) business days of the Effective Date, or upon receipt of
13 appropriate W-9 forms from the payees, whichever is later, TJX shall issue two separate checks
14 for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b) "Ema Bell"
15 in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall be delivered to the
16 following payment address:

17 Evan J. Smith, Esquire
18 Brodsky Smith
19 Two Bala Plaza, Suite 805
20 Bala Cynwyd, PA 19004

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

23 For United States Postal Service Delivery:

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

 For Non-United States Postal Service Delivery:

 Mike Gyurics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment

1 1001 I Street
2 Sacramento, CA 95814

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

5 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, or upon
6 receipt of appropriate W-9 forms from the payees, whichever is later, TJX shall pay \$18,000.00 to
7 Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs incurred as a result
8 of investigating, bringing this matter to the attention of TJX, litigating and negotiating and
9 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
10 Procedure § 1021.5.

11 **5. RELEASE OF ALL CLAIMS**

12 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
13 on her own behalf, and on behalf of the public interest, and TJX, and its parents, shareholders,
14 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
15 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
16 successors and assigns ("Defendant Releasees"), and all downstream entities from whom they
17 directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
18 suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, and their parents,
19 subsidiaries, and affiliates, franchisees, and cooperative members ("Downstream Releasees"), of
20 all claims for violations of Proposition 65 based on exposure to DEA from use of the Covered
21 Products manufactured, distributed, or sold by TJX within 60 days after the Effective Date, as set
22 forth in the Notice. It is the Parties' intention that this Consent Judgment shall have preclusive
23 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its
24 interests or the public interest shall be permitted to pursue and take any action with respect to any
25 violation of Proposition 65 based on exposure to DEA from use of the Covered Products that was
26 alleged in the Complaint, or that could have been brought pursuant to the Notice against TJX and
27 the Downstream Releasees ("Proposition 65 Claims"). TJX's compliance with the terms of this
28

1 Consent Judgment constitutes compliance with Proposition 65 by TJX with regard to exposure to
2 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 action
6 and releases TJX, Defendant Releasees, and Downstream Releasees from any and all manner of
7 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
8 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
9 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
10 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
11 manufactured, distributed, or sold by TJX, Defendant Releasees or Downstream Releasees. With
12 respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any
13 and all 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
19 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
20 DEBTOR OR RELEASED PARTY.

21 5.3 TJX waives any and all claims against Bell, her attorneys and other representatives,
22 for any and all actions taken, or statements made (or those that could have been taken or made) by
23 Bell and her attorneys and other representatives in the course of investigating claims regarding the
24 Notice or otherwise seeking enforcement of Proposition 65 against it in this matter, and only with
25 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.

1 **7. NOTICE TO DEFENDANT**

2 7.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following address:

6 For Defendant:

7 The TJX Companies, Inc.
8 770 Cochituate Road
9 Framingham, MA 01701

10 Jeffrey B. Margulies
11 Norton Rose Fulbright US LLP
12 555 S. Flower St., 41st Fl.
13 Los Angeles, CA 90071

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

16 **8. NOTICE TO PLAINTIFF**

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

21 For Bell:

22 Evan Smith
23 Brodsky Smith
24 9465 Wilshire Blvd., Ste. 300
25 Beverly Hills, CA 90212

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

28 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

3 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
4 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25
26
27
28

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: _____

Date: 7/30/24

10 By: _____

By: J. A. P.

11 EMA BELL

THE VIX COMPANIES, INC.

Jennifer A. Peoples
VP, Legal

12
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14
15 Dated: 9/24/24

Ul

Judge of Superior Court

RICHARD B. ULMER

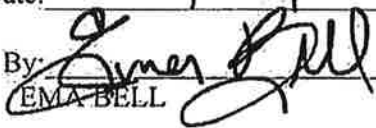
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: 8 / 6 / 24
By: 
EMMA BELL

Date: _____
By: _____
THE TJX COMPANIES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court