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FILED
Superior Court of California
County of San Francisco

DEC 10 2024

CLERK OF THE SUPERIOR COURT
By Victor Pa Yonka
Deputy

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

11 EMA BELL,

12 Plaintiff,

13 v.

14 DAISO CALIFORNIA LLC,

15 Defendant.

Case No.: CGC-24-614312

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 10, 2024

Hearing Time: 9:30 AM

Complaint Filed: May 1, 2024

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 Daiso USA LLC, formerly Daiso California
4 LLC ("Daiso" or "Defendant"), with Bell and Defendant collectively referred to as the "Parties"
5 and each of them as a "Party." Bell is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. Daiso 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 lead from its sales of fruit bouquet mugs (the "Product"), without providing a clear
11 and reasonable exposure warning pursuant to Proposition 65. Lead is listed pursuant to Proposition
12 65 as a chemical known to the State of California to cause cancer and birth defects or other
13 reproductive harm.

14 **1.3 Notice of Violation/Action.** On or about November 29, 2023, Bell served Daiso
15 and 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 the Product exposes users
18 in California to lead. No public enforcer has brought and is diligently prosecuting the claims alleged
19 in the Notice. On May 1, 2024, Bell filed a complaint (the "Complaint").

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

26 **1.5** Defendant denies the material allegations contained in Bell's Notice and Complaint
27 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
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1 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
2 shall compliance with this Consent Judgment constitute or be construed as an admission by
3 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
4 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
5 responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7 **2.1 Covered Products.** The term "Covered Products" means fruit bouquet mugs that
8 are manufactured, distributed, shipped into California and offered for sale in California by Daiso.

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

11 **3. INJUNCTIVE RELIEF: WARNINGS**

12 **3.1 Clear and Reasonable Warning.** Commencing within sixty (60) days after the
13 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
14 this §§ 3.1 and 3.2 must be provided for all Products that Daiso manufacturers, imports, distributes,
15 sells, or offers for sale in California. There shall be no obligation for Daiso to provide an exposure
16 warning for Products that entered the stream of commerce within 60 days after the Effective Date.
17 The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.1(a)
18 or (b), respectively:

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

20 **⚠ WARNING:** This product can expose you to chemicals including lead, which
21 is known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

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

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

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

15 In addition to affixing the **Warning or Alternative Warning** to the Product's packaging or
16 labeling, the **Warning or Alternative Warning** shall be posted on websites where Daiso offers
17 Products for sale to consumers in California. The requirements of this Section shall be satisfied if
18 the **Warning or Alternative Warning**, or a clearly marked hyperlink using the word
19 "WARNING," appears on the product display page, or by otherwise prominently displaying the
20 warning to the purchaser prior to completing the purchase. To comply with this Section, Daiso shall
21 (a) post the **Warning or Alternative Warning** on its own website and, if it has the ability to do so,
22 on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the
23 **Warning or Alternative Warning** on the websites of its third-party internet sellers, provide such
24 sellers with written notice in accordance with Title 27, California Code of Regulations, Section
25 25600.2. Third-party internet sellers of the Product that have been provided with written notice in
26 accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in
27 Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

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1 **3.3 Compliance with Warning Regulations.** The Parties agree that Daiso shall be
2 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
3 Settlement Agreement or by complying with warning regulations adopted by the State of
4 California's OEHHA applicable to the Product and the exposure at issue.

5 **4. MONETARY TERMS**

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

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

14 Evan J. Smith, Esquire
15 Brodsky Smith
16 Two Bala Plaza, Suite 805
17 Bala Cynwyd, PA 19004

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

20 For United States Postal Service Delivery:

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

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
29 Office of Environmental Health Hazard Assessment
30 1001 I Street
31 Sacramento, CA 95814

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

1 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Daiso shall pay
2 \$23,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
3 incurred as a result of investigating, bringing this matter to the attention of Daiso, litigating and
4 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
5 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 (a) Daiso; (b) its parents, shareholders,
9 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
10 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their respective officers,
11 directors, shareholders, employees, predecessors, successors and assigns; and (c) each of Daiso's
12 downstream distributors, wholesalers, vendors, licensors, licensees, retailers, franchisees, dealers,
13 customers, and purchasers ("Defendant Releasees"), of all claims for violations of Proposition 65
14 based on exposure to lead from use of the Covered Products manufactured, distributed, or sold by
15 Daiso within 60 days after the Effective Date. It is the Parties' intention that this Consent Judgment
16 shall have preclusive effect such that no other actions by private enforcers (including Bell), whether
17 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and
18 take any action with respect to any violation of Proposition 65 based on exposure to lead from use
19 of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant
20 to the Notice against Daiso and the Defendant Releasees ("Proposition 65 Claims"). Daiso's
21 compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
22 by Daiso with regard to exposure to lead from use of 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 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 Daiso and Defendant Releasees from any and all manner of actions, causes of action,
27 claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities,
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1 damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or
2 unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged
3 violations of Proposition 65 related to or arising from Covered Products manufactured, distributed,
4 or sold by Daiso or Defendant Releasees. With respect to the foregoing waivers and releases in this
5 paragraph, Bell hereby specifically waives any and all rights and benefits which she now has, or in
6 the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,
7 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.

14 5.3 Daiso waives any and all claims against Bell, her attorneys and other representatives,
15 for any and all actions taken, or statements made (or those that could have been taken or made) by
16 Bell and her attorneys and other representatives, whether in the course of investigating claims or
17 otherwise seeking enforcement of Proposition 65 against it in this matter, and with respect to
18 Covered Products.

19 **6. INTEGRATION**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
21 any and all prior negotiations and understandings related hereto shall be deemed to have been
22 merged within it. No representations or terms of agreement other than those contained herein exist
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

24 **7. NOTICES**

25 7.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
27 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
28 by the other party at the following addresses:

For Defendant:

Steven G. Teraoka

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Teraoka & Partners LLP
Four Embarcadero Center, Ste. 1400
San Francisco, CA 94111

And

For Bell:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212

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.

8. COUNTERPARTS; FACSIMILE SIGNATURES

8.1 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.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

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

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

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

1 **10. MODIFICATION**

2 10.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **11. ATTORNEY'S FEES**

5 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

7 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
8 pursuant to law.

9 **12. RETENTION OF JURISDICTION**

10 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

12 **13. AUTHORIZATION**

13 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this
15 document and certify that he or she is fully authorized by the Party he or she represents to execute
16 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
17 explicitly provided herein each Party is to bear its own fees and costs.

18 **AGREED TO:**

AGREED TO:

19
20 Date: _____

Date: 10/22/2024

21 By: _____
22 EMA BELL

DocuSigned by: Nick Goodner
By: *Nick Goodner* General Counsel
23 DAISO USA LLC, formerly DAISO
CALIFORNIA LLC

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

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26 Dated: _____ 12/0/24

Ulmer

Judge of Superior Court

RICHARD B. ULMER

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13.1 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: 10 / 22 / 24

Date: _____

By: 
EMA BELL

By: _____
DAISO USA LLC, formerly DAISO CALIFORNIA LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court