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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 EMA BELL,

12 Plaintiff,

13 v.

14 SANTANA TESORO, LLC, THE TJX
15 OPERATING COMPANIES, INC., NBC
16 FOURTH REALTY CORP.,

17 Defendant.

Case No.: RG16840058

CONSENT JUDGMENT

Judge: Dennis Hayashi

Dept.: 518

Hearing Date: April 26, 2018

Hearing Time: 2:30 PM

Reservation #: R-1928117

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 The TJX Operating Companies, Inc.
4 (“TJX” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each
5 of them as a “Party.” Bell is 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 Defendant has exposed
10 individuals to Di(2-ethylhexyl) phthalate (DEHP) from Carlos by Carlos Santana Perforated
11 Wristlet Clutches, Style Number 58526260 without providing clear and reasonable warnings under
12 Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California
13 to cause cancer and reproductive toxicity.

14 **1.3 Notice of Violation/Complaint.** On or about August 12, 2016, Bell served TJX
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 was in
17 violation of Proposition 65 for failing to warn consumers and customers that Carlos by Carlos
18 Santana Perforated Wristlet Clutches, Style Number 58526260 exposed users in California to
19 DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
20 Notice. On November 23, 2016, Bell filed a complaint (the “Complaint”) in the matter.¹

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

26
27 ¹ On March 7, 2017, Plaintiff filed a Request for Voluntary Dismissal as to defendants
28 Santana Tesoro, LLC and NBC Fourth Realty Corp. The Court entered dismissal as to these
defendants on March 13, 2017.

1 and/or in the Notice.

2 1.5 Defendant denies the material allegations contained in Bell's Notice and Complaint
3 and 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 Carlos by Carlos Santana
11 Perforated Wristlet Clutches, Style Number 58526260 that are purchased for sale, distributed and/or
12 sold in California by TJX.

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: WARNINGS**

16 3.1 As of the Effective Date, TJX shall not order from any supplier any Covered
17 Products intended for retail sale in California that contain DEHP on any component to which
18 consumers are exposed in excess of 0.1% (1,000 ppm) (hereinafter "Reformulated Products")
19 unless the Covered Product is accompanied by a warning that complies with Article 6 of Title 27
20 of the California Code of Regulations. Covered Products purchased by TJX before the Effective
21 Date may be sold without a warning even if not Reformulated Products. Until August 30, 2018,
22 the warning shall consist of either:

- 23 (a) The statement: "WARNING: This product contains a chemical known to the State
24 of California to cause cancer and birth defects or other reproductive harm."; or
25 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle
26 with a bold black outline to the left of the word "warning" in bold all capital letters, followed
27 by the statement "This product can expose you to chemicals including Di(2-ethylhexyl)
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1 phthalate (DEHP), which is known to the State of California to cause cancer and birth
2 defects or other reproductive harm. For more information, go to
3 www.P65Warnings.ca.gov.”; or (2) a warning consisting of a symbol that is a black
4 exclamation point in a yellow equilateral triangle with a bold black outline to the left of the
5 word “warning” in bold all capital letters, followed by the statement “Cancer and
6 Reproductive Harm - www.P65Warnings.ca.gov.”²

7 For products manufactured on and after August 30, 2018, the warning set forth in Section 3.1(b)
8 shall be used.

9 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
10 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
11 automatic process, providing that the warning is displayed with such conspicuousness, as compared
12 with other words, statements, or designs as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use. A warning may be contained
14 in the same section of the packaging, labeling, or instruction booklet that states other safety
15 warnings, if any, concerning the use of the product and shall be at least the same size as those other
16 safety warnings.

17 4. MONETARY TERMS

18 4.1 **Civil Penalty.** TJX shall pay a Civil Penalty of \$1,000.00 pursuant to Health and
19 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
20 Code § 25192, with 75% of these funds remitted to the State of California’s Office of
21 Environmental Health Hazard Assessment and the remaining 25% of the Civil Penalty remitted to
22 Bell, as provided by California Health & Safety Code § 25249.12(d).

23 4.1.1 Within fourteen (14) business days of the Effective Date, TJX shall issue
24 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00;

25
26
27 ² The triangular symbol need only be in yellow where the sign, label, shelf tag or other
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of 250.00. Payment owed to
2 Bell pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith, LLC
5 Two Bala Plaza, Suite 510
6 Bala Cynwyd, PA 19004

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

8 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

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

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

18 4.2 **Attorney Fees.** TJX shall pay \$16,500.00 to Brodsky & Smith, LLC ("Brodsky
19 Smith") as complete reimbursement for Plaintiff Bell's attorneys' fees and costs incurred as a result
20 of investigating, bringing this matter to TJX's attention, litigating and negotiating and obtaining
21 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section
22 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
25 on her own behalf, and on behalf of the public interest, and TJX, and its parents, shareholders,
26 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
27 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
28

1 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to
2 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
3 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
4 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of
5 Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with
6 respect to any Covered Products manufactured, distributed, or sold by TJX prior to the Effective
7 Date. This Consent Judgment shall have preclusive effect such that no other person or entity,
8 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
9 pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the
10 Complaint, or that could have been brought pursuant to the Notice against TJX or its Downstream
11 Releasees of the Product including but not limited to (“Proposition 65 Claims”). Compliance with
12 the terms of this consent judgment constitutes compliance with Proposition 65 with regard to the
13 Covered Products.

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

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
28 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH

1 THE DEBTOR.

2 5.3 TJX waives any and all claims against Bell, her attorneys and other representatives,
3 for any and all actions taken or statements made (or those that could have been taken or made) by
4 Bell and her attorneys and other representatives, whether in the course of investigating claims or
5 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
6 Covered Products.

7 **6. INTEGRATION**

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

12 **7. GOVERNING LAW**

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

18 **8. NOTICES**

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

23 For Defendant:

24 General Counsel
25 The TJX Companies, Inc.,
26 770 Cochituate Road
27 Framingham, MA 01701

28 With copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP

1 555 South Flower Street, Forty-First Floor
2 Los Angeles, California 90071

3 And

4 For Bell:

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

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

11 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

12 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
13 which shall be deemed an original, and all of which, when taken together, shall constitute one and
14 the same document.

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

17 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
18 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
19 Defendant agrees it shall support approval of such Motion.

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,
22 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
23 30 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: _____

Date: 1/19/2016

By: _____

By: 

EMA BELL

THE TJX OPERATING COMPANIES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 3/5/2018
By: 
EMA BELL

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

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court