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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 UPPER CANADA SOAP & CANDLE  
15 MAKERS CORP.,

16 Defendant.

Case No.: RG17851646

**CONSENT JUDGMENT**

Judge: Sandra K. Bean

Dept.: 301

Hearing Date: June 12, 2017

Hearing Time: 2:30 PM

Reservation #: R-1842175

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 Upper Canada Soap & Candle  
4 Makers Corporation (“Upper Canada” or “Defendant”) with Bell and Defendant collectively  
5 referred to as the “Parties” and each of them as a “Party.” Bell is an individual residing in California  
6 who seeks to promote awareness of exposures to toxic chemicals and improve human health by  
7 reducing or eliminating hazardous substances contained in consumer products. Upper Canada is a  
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
9 §§ 25249.6 et seq.

10           1.2     **Allegations and Representations.** Bell alleges that Defendant has exposed  
11 individuals to Di(2-ethylhexyl) phthalate (DEHP) from cosmetic and toiletry bags without  
12 providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition  
13 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

14           1.3     **Notices of Violation/Complaint.** On or about December 8, 2016, Bell served  
15 Upper Canada, and various public enforcement agencies with a document entitled “60-Day Notice  
16 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that  
17 Defendant was in violation of Proposition 65 for failing to warn consumers and customers that  
18 Cosmetic and Toiletry Bags, including those containing beauty and/or bath products, exposed users  
19 in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims  
20 alleged in the Notice. On March 3, 2017, Bell filed a complaint (the “Complaint”) in the matter.

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 and/or in the Notice.

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

8     **2.     DEFINITIONS**

9           2.1     **Covered Products.** The term “Covered Products” means Cosmetic and Toiletry  
10 Bags, including those containing beauty and/or bath products that are manufactured, distributed  
11 and/or offered for sale in California by Upper Canada and that contain DEHP.

12           2.2     **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
13 entered as a Judgment of the Court.

14     **3.     INJUNCTIVE RELIEF: WARNINGS**

15           3.1     Commencing within ninety (90) days after the Effective Date, Upper Canada shall  
16 not distribute, sell, or offer for sale any Covered Products intended for retail sale in California with  
17 any component that contains DEHP in excess of 0.1% (1,000 ppm) (hereinafter “Reformulated  
18 Products”).

19     **4.     MONETARY TERMS**

20           4.1     **Initial Civil Penalty.** Upper Canada shall pay an Initial Civil Penalty of \$1,500.00  
21 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with  
22 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of  
23 California’s Office of Environmental Health Hazard Assessment and the remaining 25% of the  
24 penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

25           4.1.1    Within fourteen (14) business days of the Effective Date, Upper Canada  
26 shall issue two separate checks for the Initial Civil Penalty payment to (a) "OEHHA" in the  
27 amount of \$1,125.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of  
28

1 \$375.00. Payment owed to Bell pursuant to this Section shall be delivered to the following  
2 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 **Final Civil Penalty.** One hundred eighty (180) days after the Effective Date, Upper  
19 Canada shall make a Final Civil Penalty payment of \$1,500.00 on the same terms as set forth in  
20 Section 4.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code of  
21 Regulations, Section 3203(c), Bell agrees that the Final Civil Penalty payment shall be waived in  
22 its entirety if, on or before the Final Civil Penalty payment is due, an officer of Upper Canada  
23 provides Bell with a signed declaration certifying that all Covered Products it ships for sale or  
24 distributes for sale in California as of the date of its certification are Reformulated Products and  
25 that Upper Canada will continue to offer only Reformulated Products in California in the future.  
26 The option to provide a declaration certifying its complete early reformulation of the Covered  
27

1 Products in lieu of making the Final Civil Penalty payment otherwise required by this Section is a  
2 material term, and time is of the essence.

3 4.3 **Attorney Fees.** Upper Canada shall pay \$16,000.00 to Brodsky & Smith, LLC  
4 (“Brodsky Smith”) as complete reimbursement for Plaintiff Bell’s attorneys’ fees and costs incurred  
5 as a result of investigating, bringing this matter to Upper Canada’s attention, litigating and  
6 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code  
7 of Civil Procedure section 1021.5. Payment shall be made within fourteen (14) business days of  
8 the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

9 4.4 Upper Canada shall pay the Initial Civil Penalty and attorney fees identified in  
10 Sections 4.1 and 4.3 within fourteen (14) days of the Effective Date.

11 **5. RELEASE OF ALL CLAIMS**

12 5.1 This consent judgment is a full, final, and binding resolution between Bell acting on  
13 her own behalf, and on behalf of the public interest, and Upper Canada, and its parents,  
14 shareholders, directors, officers, employees, representatives, agents, attorneys, divisions,  
15 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,  
16 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to  
17 whom they directly or indirectly distribute or sell Covered Products, including but not limited to  
18 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,  
19 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of  
20 Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with  
21 respect to any Covered Products manufactured, distributed, or sold by Upper Canada prior to the  
22 Effective Date. This consent judgment shall have preclusive effect such that no other person or  
23 entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted  
24 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
25 the Complaint, or that could have been brought pursuant to the Notice against Upper Canada or its  
26 Downstream Releasees of the Product including but not limited to (“Proposition 65 Claims”).  
27

1 Compliance with the terms of this consent judgment constitutes compliance with Proposition 65  
2 with regard to 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/or 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 any Upper Canada, Defendant Releasees, and Downstream Releasees from any and all  
7 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,  
8 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of  
9 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the  
10 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered  
11 Products manufactured, distributed, or sold by Upper Canada, Defendant Releasees or Downstream  
12 Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell hereby  
13 specifically waives any and all rights and benefits which she now has, or in the future may have,  
14 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides  
15 as follows:

16  
17           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
19 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
20 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
21 THE DEBTOR.

22           5.3     Upper Canada waives any and all claims against Bell, her attorneys and other  
23 representatives, for any and all actions taken or statements made (or those that could have been  
24 taken or made) by Bell and her attorneys and other representatives, whether in the course of  
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
26 and/or with respect to Covered Products.

27 **6.     INTEGRATION**

28           6.1     This Consent Judgment contains the sole and entire agreement of the Parties and  
any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist  
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California and apply within the State of California. In the event that Proposition 65 is repealed or  
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

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

14 For Defendant:

15 Stephen Flatt  
16 Upper Canada Soap & Candle Makers Corporation  
17 1510A Caterpillar Road  
Mississauga ON L4X 2W9

18 With copy to:

19 Jeffrey Margulies  
20 Norton Rose Fulbright US LLP  
555 South Flower Street  
21 Forty-First Floor  
Los Angeles, CA 90071

22 And

23 For Bell:

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

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





1  
2 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
3 pursuant to law.

4 **13. RETENTION OF JURISDICTION**

5 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
6 Consent Judgment.

7 **14. AUTHORIZATION**

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

13 **AGREED TO:**

**AGREED TO:**

14 Date \_\_\_\_\_

Date April 5 / 2017

15 By \_\_\_\_\_  
16 EMA BELL

15 By [Signature]  
16 UPPER CANADA SOAP & CANDLE  
17 MAKERS CORP

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

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21 Dated \_\_\_\_\_

Judge of Superior Court

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

**13. RETENTION OF JURISDICTION**

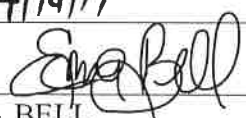
13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

**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 certifies 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: 4/14/17  
By:   
EMA BELL

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
UPPER CANADA SOAP & CANDLE  
MAKERS CORP.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court