

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

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9 *Attorneys for Plaintiff*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 EMA BELL,
13 Plaintiff,
14 v.
15 CJ GLOBAL, INC.,
16 Defendant.

Case No.: RG18896434
CONSENT JUDGMENT
Judge: Evelio Grillo
Dept.: 15
Hearing Date: July 17, 2018
Hearing Time: 3:00 PM
Reservation #: R-1962337

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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 CJ Global, Inc. (hereinafter “CJ
4 Global”), with Bell and CJ Global collectively referred to as the “Parties” and each of them as a
5 “Party.” Bell is an individual residing in California who seeks to promote awareness of exposures
6 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
7 contained in consumer products. Bell alleges that CJ Global is 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 CJ Global has exposed
10 individuals to Di(2-ethylhexyl)phthalate (“DEHP”) from headphones, earbuds, and accessories
11 without providing clear and reasonable warnings under Proposition 65. DEHP is listed under
12 Proposition 65 as a chemical known to the State of California to cause reproductive toxicity and
13 cancer.

14 **1.3 Notice of Violation/Complaint.** On or about July 19, 2017, Bell served CJ Global
15 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”
16 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that CJ Global was in
17 violation of Proposition 65 for failing to warn consumers and customers that Mental Beats
18 headphones and earbuds exposed users in California to DEHP. No public enforcer has brought and
19 is diligently prosecuting the claims alleged in the Notice. On March 9, 2018, Bell filed a complaint
20 in the matter as captioned above (“Complaint”).

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over CJ Global 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.
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1 1.5 CJ Global 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 CJ Global 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 CJ
5 Global of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by CJ Global. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of CJ Global under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means headphones, earbuds, and
10 accessories, including but not limited to related cords, cables, chargers that are sold either
11 individually or as accessories, and that have been manufactured, imported, offered for sale, and/or
12 sold in California by CJ Global.

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 Commencing ninety (90) days after the Effective Date, CJ Global shall not
17 manufacture or purchase for sale in California any Covered Product that contains more than 1,000
18 parts per million DEHP, unless the Covered Product is accompanied by either of the following
19 warning(s), or any other warning message that complies with 27 Cal. Code Regs. § 25603 (effective
20 August 30, 2018):

21 “WARNING: This product contains a chemical known to the State of California to cause
22 cancer, birth defects and other reproductive harm.”

23 Or

24 “WARNING: This product can expose you to chemicals including Di(2-ethylhexyl)
25 phthalate (DEHP), which is known to the State of California to cause cancer and birth
26 defects or other reproductive harm. For more information go to
27 www.P65Warnings.ca.gov.”
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1 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
2 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
3 on the packaging, labeling, or instruction booklet and displayed with such conspicuousness, as
4 compared with other words, statements, or designs as to render it likely to be read and understood
5 by an ordinary individual under customary conditions of purchase or use.

6 **4. MONETARY TERMS**

7 4.1 **Civil Penalty.** CJ Global shall pay a Civil Penalty of \$2,000.00 pursuant to Health
8 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
9 Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of
10 Environmental Health Hazard Assessment and the remaining 25% of the Civil Penalty remitted to
11 Bell, as provided by California Health & Safety Code § 25249.12(d).

12 4.1.1 Within ten (10) days of the Effective Date, CJ Global shall issue two
13 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
14 (b) “Brodsky & Smith, LLC in Trust for Bell” in the amount of \$500.00. Payment owed to Bell
15 pursuant to this Section shall be delivered to the following payment address:

16 Evan J. Smith, Esquire
17 Brodsky & Smith, LLC
18 Two Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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

21 For United States Postal Service Delivery:

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

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
28 1001 I Street

1 Sacramento, CA 95814

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

4 4.2 **Attorney Fees.** Within ten (10) days of the Effective Date, CJ Global shall pay
5 \$23,000.00 to Brodsky & Smith, LLC (“Brodsky Smith”) as complete reimbursement for Plaintiff
6 Bell’s attorneys’ fees and costs incurred as a result of investigating, bringing this matter to CJ
7 Global’s attention, litigating and negotiating and obtaining judicial approval of a settlement in the
8 public interest, pursuant to Code of Civil Procedure section 1021.5.

9 **5. RELEASE OF ALL CLAIMS**

10 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
11 in the public interest, and CJ Global and its parents, shareholders, divisions, subdivisions,
12 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns (“Defendant
13 Releasees”), and all entities from whom they obtain and to whom they directly or indirectly
14 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
15 distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative
16 members, including but not limited to The TJX Operating Companies, Inc. and each of its
17 subsidiaries and affiliates (“Downstream Defendant Releasees”), of all claims for violations of
18 Proposition 65 based on exposure to DEHP from Covered Products with respect to any Covered
19 Products manufactured, distributed, or sold by CJ Global prior to the Effective Date. Compliance
20 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to
21 the Covered Products.

22 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
23 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
24 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
25 and releases any CJ Global, Defendant Releasees, and Downstream Defendant Releasees from any
26 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
27 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
28 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,

1 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
2 from Covered Products manufactured distributed or sold by CJ Global or Defendant Releasees.
3 With respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically
4 waives any and all rights and benefits which she now has, or in the future may have, conferred by
5 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
8 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
9 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
10 THE DEBTOR.

11 5.3 CJ Global waives any and all claims against Bell, her attorneys and other
12 representatives, for any and all actions taken or statements made (or those that could have been
13 taken or made) by Bell and her attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and/or with respect to Covered Products.

16 **6. INTEGRATION**

17 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
18 any and all prior negotiations and understandings related hereto shall be deemed to have been
19 merged within it. No representations or terms of agreement other than those contained herein exist
20 or have been made by any Party with respect to the other Party or the subject matter hereof.

21 **7. GOVERNING LAW**

22 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed or
24 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then CJ
25 Global shall have no further obligations pursuant to this Consent Judgment with respect to, and to
26 the extent that, Covered Products are so affected.

27 **8. NOTICES**

28 8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; (ii) overnight courier; or (iii) electronic
2 mail on any Party by the other Party at the following addresses:

3 For CJ Global:

4 CJ Global, Inc.
5 Coby Cohen
6 20-21 Wagaraw Rd Bldg 30
Fair-Lawn, NJ 07410

7 And

8 For Bell:

9 Evan Smith
10 Brodsky & Smith, LLC
11 2 Bala Plaza, Suite 510
12 Bala Cynwyd, PA 19004

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

16 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and
18 the same document.

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

21 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
22 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and CJ
23 Global agrees it shall support approval of such Motion.

24 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
25 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
26 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
27 30-days, the case shall proceed on its normal course.

28 10.3 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

1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
2 its normal course on the trial court's calendar.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

7 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs unless
9 the unsuccessful Party has acted with substantial justification. For purposes of this Consent
10 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
11 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

12 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **13. RETENTION OF JURISDICTION**

15 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.


17 **14. AUTHORIZATION**

18 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective Parties and have read, understood and agree to all of the terms and conditions of this
20 document and certifies that he or she is fully authorized by the Party he or she represents to execute
21 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
22 explicitly provided herein each Party is to bear its own fees and costs.
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AGREED TO:

AGREED TO:

Date: 5/29/18
By: 
EMA BELL

Date: 5/3/2018
By: Brenda Fatal
CJ GLOBAL, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court