

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH, LLC.
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

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

11 EMA BELL,

12 Plaintiff,

13 v.

14 ROSS STORES, INC.,

15 Defendant.

Case No.: RG19031366

CONSENT JUDGMENT

Judge: Evelio M. Grillo

Dept.: 15

Hearing Date: June 22, 2021

Hearing Time: 1:30 PM

Reservation #: R-2255008

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 Ross Stores, Inc. (“Ross” or “Defendant”)
4 with Bell and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Bell
5 is an individual residing in California that seeks to promote awareness of exposures to toxic
6 chemicals and improve human health by reducing or eliminating hazardous substances contained
7 in consumer products. Ross is alleged to be a person in the course of doing business for purposes
8 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) and diisononyl phthalate (DINP) from its sales of
11 are Minky Accessories Purses and Minky Accessories Fanny Packs without providing a clear and
12 reasonable exposure warning pursuant to Proposition 65. DEHP is listed pursuant to Proposition
13 65 as a chemical known to the State of California to cause cancer and reproductive toxicity. DINP
14 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

15 1.3 **Notices of Violation/Complaints.** On or about August 27, 2018 (purse) and
16 November 5, 2019 (fanny pack) Bell served Ross and various public enforcement agencies with
17 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
18 (the “Notices”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of Minky Accessories Purses (DINP) and Minky Accessories Fanny Packs
20 (DEHP) expose users in California to DEHP or DINP. No public enforcer has brought and is
21 diligently prosecuting the claims alleged in the Notices. On August 15, 2019, Bell filed a complaint
22 (“Complaint”) in the matter. On March 30, 2021, Bell filed an amended complaint (“Amended
23 Complaint”) in the matter. Collectively, the Complaint and Amended Complaint will be referred to
24 herein as (the “Action.”)

25 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
27 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
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1 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
2 claims which were or could have been raised in the Action based on the facts alleged therein and/or
3 in the Notice.

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

11 **2. DEFINITIONS**

12 2.1 **Minky Purses.** The term “Minky Purses” means Minky Accessories Purse with
13 style number BA-997 manufactured by Minky Trading, Inc. and sold and/or offered for sale in
14 California by Ross.

15 2.2 **Minky Fanny Packs.** The term “Minky Fanny Packs” means Minky Accessories
16 Fanny Pack with style number BA-1252 manufactured by Minky Trading, Inc. and sold and/or
17 offered for sale in California by Ross

18 2.3 **Covered Products.** The term “Covered Products” means Minky Purses and Minky
19 Fanny Packs.

20 2.4 **Listed Chemical.** The term “Listed Chemical” shall mean DINP as to Minky Purses
21 and DEHP as to Minky Fanny Packs.

22 2.5 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
23 entered as a Judgment of the Court.

24 **3. INJUNCTIVE RELIEF: WARNINGS**

25 3.1 **Reformulation of Covered Products.** As of the Effective Date, Ross shall not
26 purchase Covered Products for sale in California unless the Products are: (a) Reformulated Products
27 pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to
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1 §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated Product” is a
2 Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning
3 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

4 **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products
5 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of the Listed
6 Chemical when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
7 3580A and 8270C or other methodology utilized by federal or state government agencies for the
8 purpose of determining the phthalate content in a solid substance.

9 **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
10 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
11 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant purchases for sale in
12 California that is not a Reformulated Product. There shall be no obligation for Defendant to provide
13 a warning for Covered Products that enter the stream of commerce prior to the Effective Date. The
14 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),
15 respectively:

16 (a) **Warning.:**

17 For Minky Purses:

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

21 For Minky Fanny Packs:

22 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
23 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
24 cancer and birth defects or other reproductive harm. For more information go to
25 www.P65Warnings.ca.gov.

26 (b) **Alternative Warning::**

27 For Minky Purses:

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

1 For Minky Fanny Packs

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

3 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
4 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
5 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
6 triangle with a black outline, except that if the sign or label for the Covered Product does not use
7 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
8 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
9 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
10 automatic process, providing that the warning is displayed with such conspicuousness, as compared
11 with other words, statements, or designs as to render it likely to be read and understood by an
12 ordinary individual under customary conditions of purchase or use. A warning may be contained
13 in the same section of the packaging, labeling, or instruction booklet that states other safety
14 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
15 those other safety warnings.

16 If Ross sells Covered Products via an internet website to customers located in California,
17 the warning requirements of this section shall be satisfied if the foregoing warning appears either:
18 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the
19 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a
20 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a
21 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or
22 immediately following the display, description, price, or checkout listing of the Covered Products,
23 if the warning statement appears elsewhere on the same web page in a manner that clearly associates
24 it with the product(s) to which the warning applies.

25 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
26 compliance with the warning requirements of this Consent Judgment by either adhering to §§ 3.3
27 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the State
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1 of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective
2 Date.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Ross shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
5 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
6 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
7 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

8 4.1.1 Within fifteen (15) business days of the Effective Date, Ross shall issue
9 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;
10 and to (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. Payment owed to
11 Bell pursuant to this Section shall be delivered to the following payment address:

12 Evan J. Smith, Esquire
13 Brodsky & Smith, LLC
14 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

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1 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, Ross shall
2 pay \$20,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Bell's
3 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Ross attention,
4 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
5 pursuant to Code 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 Ross, and its parents, shareholders,
9 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
10 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
11 successors and assigns ("Defendant Releasees"), and all entities to whom they directly or indirectly
12 distribute or sell Covered Products, including but not limited to, customers, licensors, licensees
13 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
14 violations of Proposition 65 based on exposure to DEHP and/or DINP from Covered Products as
15 set forth in the Notices, with respect to any Covered Products purchased for sale in California by
16 Ross prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall have
17 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
18 her, or its interests or the public interest shall be permitted to pursue and/or take any action with
19 respect to any violation of Proposition 65 that was alleged in the Action, or that could have been
20 brought pursuant to the Notices against Ross and/or the Downstream Releasees of the Covered
21 Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment
22 constitutes compliance with Proposition 65 with regard to 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/or 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 Ross, Defendant Releasees, and Downstream Releasees from any and all manner of
27 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
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1 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
2 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
3 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
4 distributed or sold by Ross, Defendant Releasees or Downstream Releasees. With respect to the
5 foregoing waivers and releases in this paragraph, Bell hereby specifically waives any and all rights
6 and benefits which she now has, or in the future may have, conferred by virtue of the provisions of
7 § 1542 of the California Civil Code, which provides as follows:

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9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
10 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
11 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
12 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
13 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
14 DEBTOR OR RELEASED PARTY.

15 **6. ENFORCEMENT**

16 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
17 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
18 California, County of Alameda, giving the required notice, enforce the terms and conditions
19 contained in this Consent Judgment. A Party may enforce any of the terms and conditions of this
20 Consent Judgment only after that Party first provides 60 days' notice to the Party allegedly failing
21 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
22 Party's failure to comply.

23 6.2 Notice of Violation. Prior to bringing any motion, order to show cause, or other
24 proceeding to enforce the terms of this Consent Judgment. Bell shall provide a Notice of Violation
25 ("NOV") to Ross. The NOV shall include the date(s) the alleged violation(s) was observed and the
26 location at which the Covered Product was offered for sale and shall be accompanied by all test
27 data obtained by Bell regarding the Covered Products, and any evidence or support of the
28 allegations in the NOV.

6.3 Bell shall take no further action regarding the alleged violation if, within 60 days of
receiving such NOV, Ross serves a notice that meets one of the following conditions:

1 6.3.1 The Covered Products purchased by Ross for sale in California before the
2 Effective Date, or

3 6.3.2 Since receiving the NOV, Ross has taken corrective action by either (i)
4 removing the Covered Products identified in the NOV from sale in California, or (ii) providing a
5 clear and reasonable warning for the Covered Products identified in the NOV pursuant to Section
6 3 above with written confirmation to Bell.

7 **7. INTEGRATION**

8 7.1 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 **8. GOVERNING LAW**

13 8.1 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 **9. NOTICES**

19 9.1 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 of Ross Stores, Inc.
25 1372 Broadway
26 New York, NY 10018

27 With copy to:

28 Jeffrey Margulies

1 Norton Rose Fulbright US LLP
2 555 South Flower Street, Forty-First Floor
3 Los Angeles, CA 90071

4 And

5 For Bell:

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

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

12 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

13 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
14 which shall be deemed an original, and all of which, when taken together, shall constitute one and
15 the same document.

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

18 11.1 Bell agrees to comply with the requirements set forth in California Health & Safety
19 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.

20 11.2 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, the
22 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
23 days, the case shall proceed on its normal course.

24 11.3 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 **12. MODIFICATION**

12.1 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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13. ATTORNEY'S FEES

13.1 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.

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

14. RETENTION OF JURISDICTION

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

15. AUTHORIZATION

15.1 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: 4/19/21

By: _____
EMA BELL

By: [Signature]
ROSS STORES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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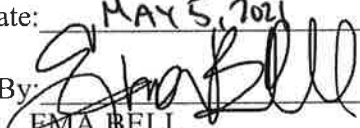
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AGREED TO:

AGREED TO:

Date: MAY 5, 2021
By: 
EMMA BELL

Date: _____
By: _____
ROSS STORES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court