

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 ABG JUICY COUTURE, LLC, et al.,

15 Defendants.

Case No.: RG19019842

CONSENT JUDGMENT

Judge: Noel Wise

Dept.: 24

Hearing Date: October 17, 2019

Hearing Time: 9:00 AM

Reservation #: R-2107838

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 Tri-Coastal Design Group Inc. (“Tri-
4 Coastal” or “Defendant”), as licensee for ABG Juicy Couture, LLC (“ABG Juicy Couture”) with
5 Bell and Tri-Coastal collectively referred to as the “Parties” and each of them as a “Party.” Bell is
6 an individual residing in California that seeks to promote awareness of exposures to toxic chemicals
7 and improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. Tri-Coastal is alleged to be a person in the course of doing business for purposes of
9 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Bell alleges that Tri-Coastal has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Juicy jump ropes without
12 providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed
13 under Proposition 65 as a chemical known to the State of California to cause cancer and
14 reproductive toxicity.

15 **1.3 Notice of Violation/Complaint.** On or about January 15, 2019, Bell served ABG
16 Juicy Couture, and various public enforcement agencies with documents entitled “60-Day Notice
17 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that ABG
18 Juicy Couture, through its licensee Tri-Coastal violated Proposition 65 for failing to warn
19 consumers and customers that use of Juicy jump ropes expose users in California to DEHP. No
20 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May
21 22, 2019, Bell filed a complaint (the “Complaint”) in the matter.

22 **1.3.1** This Settlement is entered into by the Parties as a global settlement of all claims
23 brought by Bell pursuant to the Notice served on defendants ABG Juicy Couture and Burlington
24 Coat Factory Warehouse Corp., and their affiliates and subsidiaries regarding alleged exposures to
25 DEHP in Covered Products supplied by Tri-Coastal. To facilitate this global settlement, upon court
26 approval of this Consent Judgment, the Complaint shall be deemed amended to name Bell as a
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1 plaintiff, and Tri-Coastal Design Group Inc. as defendant, and to include claims based on the
2 Notice.

3 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
4 jurisdiction over Tri-Coastal as to the allegations contained in the Complaint filed in this matter,
5 that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
6 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
7 claims which were or could have been raised in the Complaint based on the facts alleged therein
8 and/or in the Notice.

9 1.5 Defendant denies the material allegations contained in the Notice and Complaint
10 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
11 construed as an admission by of any fact, finding, issue of law, or violation of law; nor shall
12 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
13 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
14 Defendant. However, this section shall not diminish or otherwise affect the obligations,
15 responsibilities, and duties of Tri-Coastal under this Consent Judgment.

16 **2. DEFINITIONS**

17 2.1 **Covered Products.** The term “Covered Products” means Juicy jump ropes that are
18 manufactured, distributed and/or offered for sale in California by Tri-Coastal, as licensee for ABG
19 Juicy Couture.

20 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
21 entered as a Judgment of the Court.

22 **3. INJUNCTIVE RELIEF: WARNINGS**

23 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
24 signed by both Parties, and continuing thereafter, Covered Products that are directly manufactured,
25 imported, distributed, sold, and/or offered for sale in California by Tri-Coastal shall either: (a) be
26 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
27 exposure warning pursuant to §§ 3.3 and 3.4, below by Tri-Coastal. For purposes of this Consent
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1 Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the standard
2 set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any
3 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 DEHP
6 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
7 and 8270C or other methodology utilized by federal or state government agencies for the purpose
8 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 by Tri-Coastal for all Covered Products that Tri-Coastal
12 manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated
13 Product. There shall be no obligation for Tri-Coastal to provide a warning for Covered Products
14 that enter the stream of commerce prior to the date this Consent Judgment is signed by both Parties.
15 The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a)
16 or (b), respectively:

17 (a) **Warning.** The “Warning” shall consist of the statement:

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

21 (b) **Alternative Warning:** Tri-Coastal may, but is not required to, use the alternative
22 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

24 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
25 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
26 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
27 triangle with a black outline, except that if the sign or label for the Covered Product does not use
28 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller

1 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
2 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
3 automatic process, providing that the warning is displayed with such conspicuousness, as compared
4 with other words, statements, or designs as to render it likely to be read and understood by an
5 ordinary individual under customary conditions of purchase or use. A warning may be contained
6 in the same section of the packaging, labeling, or instruction booklet that states other safety
7 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
8 those other safety warnings.

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

18 **3.5 Compliance with Warning Regulations.** The Parties agree that Tri-Coastal shall
19 be deemed to be in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of
20 this Consent Judgment or by complying with warning requirements adopted by the State of
21 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective
22 Date.

23 **3.6 Sell-off.** Notwithstanding anything stated herein to the contrary, Tri-Coastal’s
24 Downstream and Upstream Releasees, as such parties are defined below, shall have the right to
25 sell-off their remaining inventory of the Covered Products.
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1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Tri-Coastal shall pay \$3,000.00 as a Civil Penalty pursuant to Health
3 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
5 Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

6 4.1.1 Within ten (10) days of the Effective Date, Tri-Coastal shall issue two
7 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00; and
8 to (b) “Brodsky & Smith, LLC in Trust for Bell” in the amount of \$750.00. Payment owed to Bell
9 pursuant to this Section shall be delivered to the following payment address:

10 Evan J. Smith, Esquire
11 Brodsky & Smith, LLC
12 Two Bala Plaza, Suite 510
13 Bala Cynwyd, PA 19004

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

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

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

 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Tri-Coastal shall pay
\$27,000.00 to Brodsky & Smith, LLC (“Brodsky Smith”) as complete reimbursement for Bell’s
attorneys’ fees and costs incurred as a result of investigating, bringing this matter to ABG Juicy

1 Couture’s attention, litigating and negotiating and obtaining judicial approval of a settlement in the
2 public interest, pursuant to Code of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
5 on her own behalf, and on behalf of the public interest, and ABG Juicy Couture and its licensee,
6 Tri-Coastal, and their respective parents, shareholders, members, directors, officers, managers,
7 employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister
8 companies, and affiliates, and their predecessors, successors and assigns (“Releasees”), and all
9 entities from whom Tri-Coastal obtains and to whom Tri-Coastal directly or indirectly distribute or
10 sell Covered Products, including but not limited to manufacturers, suppliers, distributors,
11 wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members,
12 including but not limited to Burlington Coat Factory Warehouse, Corp., and their parents,
13 shareholders, members, directors, officers, managers, employees, representatives, agents,
14 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates
15 (“Downstream and Upstream Releasees”), of all claims for violations of Proposition 65 based on
16 exposure to DEHP from Covered Products as set forth in the Notice, with respect to any Covered
17 Products manufactured, distributed, or sold by Tri-Coastal prior to the Effective Date. This Consent
18 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
19 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
20 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
21 been brought pursuant to the Notice against the Releasees and/or the Downstream and Upstream
22 Releasees of the Covered Products (“Proposition 65 Claims”). Compliance with the terms of this
23 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

24 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
25 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
26 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
27 and releases ABG Juicy Couture, its licensee, Tri-Coastal, the Releasees, and Downstream and
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1 Upstream Releasees from any and all manner of actions, causes of action, claims, demands, rights,
2 suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses,
3 costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity,
4 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
5 related to or arising from Covered Products manufactured, distributed, or sold by ABG Juicy
6 Couture's licensee, Tri-Coastal, Releasees or Downstream and Upstream Releasees. With respect
7 to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any and all
8 rights and benefits which she now has, or in the future may have, conferred by virtue of the
9 provisions of § 1542 of the California Civil Code, which provides as follows:

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

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

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

3 **8. NOTICES**

4 8.1 Unless specified herein, all correspondence and notices required to be provided
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
6 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
7 by the other party at the following addresses:

8 For Defendant:

9 Tedd S. Levine
10 THE LAW OFFICES OF TEDD S. LEVINE, LLC
11 150 Motor Parkway, Suite 401
Hauppauge, NY 11788

12 And

13 For Bell:

14 Evan Smith
15 Brodsky & Smith, LLC
16 9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and
22 the same document.

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

25 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
26 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
27 Defendant agrees it shall support approval of such Motion.
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1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
3 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
4 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

15 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
16 pursuant to law.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

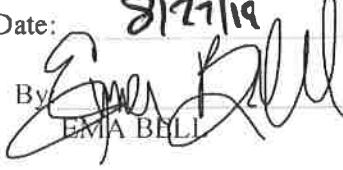
20 **14. AUTHORIZATION**

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

AGREED TO:

Date: 8/27/19
By: 
EMMA BELL

Date: 8/14/19
By: 
TRI-COASTAL DESIGN GROUP INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court