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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 ROSS STORES, INC.,

15 Defendants.

Case No.: RG20076554

CONSENT JUDGMENT

Judge: Delbert Gee

Dept.: 514

Hearing Date: November 18, 2022

Hearing Time: 2:00 PM

Reservation #: 941861560638

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/or diisononyl phthalate (DINP) from its sales
11 of (1) Clear Tote; and (2) Blue Iridescent Tote Bag without providing a clear and reasonable
12 exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical
13 known to the State of California to cause cancer and reproductive toxicity.

14 1.3 **Notices of Violation/Complaint.**

15 1.3.1 On or about October 31, 2019, Bell served Ross, and various public
16 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
17 Safety Code §25249.7(d) (the “October 31, 2019 Notice”), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of Blue Iridescent Tote Bag
19 expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting
20 the claims alleged in the Notice.

21 1.3.2 On or about February 5, 2020, Bell served Ross, and various public
22 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
23 Safety Code §25249.7(d) (the “February 5, 2020 Notice”), alleging that Defendant violated
24 Proposition 65 for failing to warn consumers and customers that use of Clear Tote expose users in
25 California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged
26 in the Notice.

1 1.3.3 On September 28, 2020, Bell filed the instant complaint (the “Complaint”)
2 in this matter setting forth violations of Proposition 65 for both the Blue Iridescent Tote Bag and
3 Clear Tote as alleged in the October 31, 2019 Notice and February 5, 2020 Notice.

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

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

17 **2. DEFINITIONS**

18 2.1 **Blue Iridescent Tote Bag.** The term “Blue Iridescent Tote Bag” means Blue
19 Iridescent Tote Bag with SKU 400199856363.

20 2.2 **Clear Tote.** The term “Clear Tote” means Clear Tote with SKU 400198647504.

21 2.3 **Covered Products.** The term “Covered Products” means Blue Iridescent Tote Bag
22 and Clear Tote

23 2.4 **Notices.** The term “Notices” means the October 31, 2019 Notice and February 5,
24 2020 Notice as described in Sections 1.3.1 and 1.3.2.

25 2.5 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
26 entered as a Judgment of the Court.

1 **3. INJUNCTIVE RELIEF: WARNINGS**

2 **3.1 Reformulation of Covered Products.** After the Effective date, Ross shall not order
3 any Covered Products for sale into California, unless the Covered Products are either: (a)
4 Reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
5 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated
6 Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
7 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

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

13 **3.3 Clear and Reasonable Warning.** After the Effective date, a clear and reasonable
14 exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that
15 Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a
16 Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered
17 Products that enter the stream of commerce prior to the Effective Date. The warning shall consist
18 of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:


19 (a) **Warning.** The “Warning” shall consist of the statement for the Blue Iridescent Tote
20 Bag:

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


24 The “Warning” shall be the below for the Clear Tote:

25 **⚠ WARNING:** This product can expose you to chemicals including diisononyl
26 phthalate (DINP), which is known to the State of California to cause cancer. For
27 more information go to www.P65Warnings.ca.gov.

1 (b) **Alternative Warning:** Ross may, but is not required to, use the alternative short-
2 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows for the Blue
3 Iridescent Tote Bag:

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

5 Or the below for the Clear Tote:

6  **WARNING:** Cancer - www.P65Warnings.ca.gov.

7 (c) Ross may use any form of “safe harbor” warning set forth in Proposition 65
8 regulations that are adopted at the time it places a Product in the stream of commerce.

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

22 If Ross sells Covered Products via an internet website to customers located in California,
23 the warning requirements of this section shall be satisfied if the foregoing warning appears either:

24 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the
25 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a
26 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a
27 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or
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1 immediately following the display, description, price, or checkout listing of the Covered Product,
2 if the warning statement appears elsewhere on the same web page in a manner that clearly associates
3 it with the product(s) to which the warning applies. Defendant shall instruct any third party internet
4 sellers to provide the warning as a condition of sale of the Covered Product.

5 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
6 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
7 Judgment or by complying with warning requirements adopted by the State of California’s Office
8 of Environmental Health Hazard Assessment (“OEHHA”) applicable to the product and the
9 exposure at issue after the Effective Date.

10 **4. MONETARY TERMS**

11 **4.1 Civil Penalty.** Ross shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
12 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
13 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining
14 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety Code
15 § 25249.12(d).

16 **4.1.1** Within fourteen (14) business days of the Effective Date, Ross shall issue
17 two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00;
18 and to (b) “Brodsky & Smith in Trust for Bell” in the amount of \$250.00. Payment owed to Bell
19 pursuant to this Section shall be delivered to the following payment address:

20 Evan J. Smith, Esquire
21 Brodsky & Smith
22 Two Bala Plaza, Suite 805
23 Bala Cynwyd, PA 19004

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

26 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

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

9 4.2 **Attorneys' Fees.** Within fourteen (14) business days of the Effective Date, Ross
10 shall pay \$16,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for
11 Bell's attorneys' fees and costs incurred as a result of investigating, bringing this matter to Ross
12 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
13 interest, pursuant to Code of Civil Procedure § 1021.5.

14 **5. RELEASE OF ALL CLAIMS**

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

1 content of the Covered Products (“Proposition 65 Claims”). Third party internet sellers who do not
2 provide a warning in compliance with §§ 3.4, above are expressly not covered by this release.

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

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

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

27 **6. INTEGRATION**

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

1 it. No representations or terms of agreement other than those contained herein exist or have been
2 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. If Proposition 65 is repealed or is otherwise
6 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
7 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
8 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 General Counsel
16 Ross Stores, Inc.
17 5130 Hacienda Drive
18 Dublin, CA 94568

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

23 And

24 For Bell:

25 Evan Smith
26 Brodsky & Smith
27 9595 Wilshire Blvd., Ste. 900
28 Beverly Hills, CA 90212

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
8 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

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13. RETENTION OF JURISDICTION

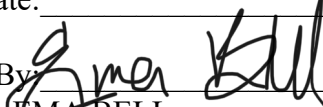
13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

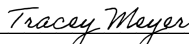
14. AUTHORIZATION

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: 8/24/2022
By: 
EMMA BELL

Date: 7/20/22
By: 
ROSS STORES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court