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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,  
12 Plaintiff,  
13 v.  
14 NO RINSE LABORATORIES, LLC,  
15 CVS PHARMACY, INC.,  
16 Defendants.

Case No.: CGC-21-594409  
**[PROPOSED] CONSENT  
JUDGMENT**  
Judge: Richard B. Ulmer  
Dept.: 302  
Hearing Date: May 5, 2023  
Hearing Time: 9:30 AM  
Complaint Filed: August 10, 2021

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**1. INTRODUCTION**

1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell (“Bell” or “Plaintiff”) and No Rinse Laboratories, LLC (“No Rinse” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Plaintiff is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. No Rinse is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Bell alleges that Defendant has exposed individuals to diethanolamine (DEA) from its sales of shampoos without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEA is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notice of Violation/Complaint.** On or about August 14, 2020, Bell served Defendant, CVS Pharmacy, Inc., and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”). The Notice provided Defendant and such others, including public enforcers, with notice that alleged that Defendant was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On August 10, 2021, Bell filed a complaint (the “Complaint”) in the matter.

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



1 for Standardization (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw  
2 materials.

3           **3.2.1 Reporting Limit.** The “Reporting Limit” is the lowest concentration at  
4 which DEA can be reported in a sample of a Covered Product by a commercially reasonable  
5 accredited testing laboratory employing LC/MS/MS analysis or other method of analysis utilized  
6 by the ISO for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

7           **3.3 Clear and Reasonable Warning.** Except for Covered Products already in the  
8 stream of commerce, as of 180 days after the Effective Date, and continuing thereafter, No Rinse  
9 must provide a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 for all  
10 Covered Products that Defendant manufacturers or imports for sale to wholesale or retail businesses  
11 in California that is not a Reformulated Product. The warning shall consist of either the **Warning**  
12 or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

14           **⚠ WARNING:** This product can expose you to chemicals including  
15 diethanolamine (DEA), which is known to the State of California to cause cancer.  
16 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

19           **⚠ WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

20           **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word  
21 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
22 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
23 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
24 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
25 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
26 Covered Product’s packaging or labeling, providing that the warning is displayed with such  
27 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
28 read and understood by an ordinary individual under customary conditions of purchase or use. A

1 warning may be contained in the same section of the packaging, labeling, or instruction booklet  
2 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at  
3 least the same size as those other safety warnings.

4 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's  
5 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where  
6 No Rinse offers Covered Products for sale to consumers in California. The requirements of this  
7 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink  
8 using the word "**WARNING**," appears on the product display page, or by otherwise prominently  
9 displaying the warning to the purchaser prior to completing the purchase. To comply with this  
10 Section, No Rinse shall (a) post the **Warning** or **Alternative Warning** on its own website and, if  
11 it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not  
12 have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party  
13 internet sellers, provide such sellers with written notice in accordance with Title 27, California  
14 Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been  
15 provided with written notice in accordance with Title 27, California Code of Regulations, Section  
16 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning  
17 requirements of this Section.

18 3.5 **Compliance with Warning Regulations.** The Parties agree that Defendant shall be  
19 deemed in compliance with the warning requirements in this Consent Judgment by either adhering  
20 to §§ 3.3 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by  
21 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")  
22 applicable to the Covered Product and the exposures at issue after the Effective Date.

23 **4. MONETARY TERMS**

24 4.1 **Civil Penalty.** Defendant shall pay \$3,000.00 as a Civil Penalty pursuant to Health  
25 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
26 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
27 Civil Penalty remitted to Plaintiff, as provided by California Health & Safety Code § 25249.12(d).

1                   4.1.1 Within ten (10) business days of the Effective Date, Defendant shall issue  
2 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00;  
3 and to (b) "Brodsky Smith in Trust for Bell" in the amount of \$750.00. Payment owed to Bell  
4 pursuant to this Section shall be delivered to the following payment address:

5                   Evan J. Smith, Esquire  
6                   Brodsky Smith, LLC  
7                   Two Bala Plaza, Suite 805  
8                   Bala Cynwyd, PA 19004

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

11                   For United States Postal Service Delivery:

12                   Mike Gyurics  
13                   Fiscal Operations Branch Chief  
14                   Office of Environmental Health Hazard Assessment  
15                   P.O. Box 4010  
16                   Sacramento, CA 95812-4010

17                   For Non-United States Postal Service Delivery:

18                   Mike Gyurics  
19                   Fiscal Operations Branch Chief  
20                   Office of Environmental Health Hazard Assessment  
21                   1001 I Street  
22                   Sacramento, CA 95814

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

25                   4.2     **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Defendant  
26 shall pay \$27,000.00 to Brodsky & Smith as complete reimbursement for Plaintiff's attorneys' fees  
27 and costs incurred as a result of investigating, bringing this matter to Defendant's attention,  
28 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,  
pursuant to Code of Civil Procedure § 1021.5.

29 **5.     RELEASE OF ALL CLAIMS**

30                   5.1     This Consent Judgment is a full, final, and binding resolution between Plaintiff  
31 acting on her own behalf, and on behalf of the public interest, and Defendant, and its parents,

1 subsidiaries, shareholders, affiliates and each of their members, directors, officers, managers,  
2 employees, representatives, agents, attorneys, divisions, subdivisions, and their predecessors,  
3 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to  
4 whom they directly or indirectly distribute or sell Covered Products, including CVS Pharmacy, Inc.  
5 and including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,  
6 licensors, licensees retailers, franchisees, and cooperative members, (“Downstream Releasees”), of  
7 all claims for violations of Proposition 65 based on exposure to DEA from use of Covered Products,  
8 including any Covered Products manufactured or imported by Defendant prior to 180 days after  
9 the Effective Date without a warning. It is the Parties’ intention that this Consent Judgment shall  
10 have preclusive effect such that no other actions by private enforcers, whether purporting to act in  
11 his, her, or its interests or the public interest shall be permitted to pursue and/or take any action  
12 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have  
13 been brought pursuant to the Notice against Defendant and/or the Downstream Releasees of the  
14 Covered Products (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment  
15 constitutes compliance with Proposition 65 as regards exposure to DEA from use of the Covered  
16 Products.

17           5.2     In addition to the foregoing, Plaintiff, on behalf of herself, her past and current  
18 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative  
19 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
20 legal action and releases Defendant, Defendant Releasees, and Downstream Releasees, from any  
21 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
22 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
23 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
24 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
25 from Covered Products manufactured, distributed, or sold by Defendant, Defendant Releasees or  
26 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
27 Plaintiff specifically waives any and all rights and benefits she now has, or in the future may have,  
28

1 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
2 follows:

3  
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
7 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
8 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
9 DEBTOR OR RELEASED PARTY.

10 5.3 Defendant waives any and all claims against Plaintiff, his attorneys and other  
11 representatives, for any and all actions taken, or statements made (or those that could have been  
12 taken or made) by Plaintiff and his attorneys and other representatives, whether in the course of  
13 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this Action,  
14 and/or with respect to Covered Products.

15 **6. INTEGRATION**

16 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all  
17 prior negotiations and understandings related hereto shall be deemed to have been merged within  
18 it. No representations or terms of agreement other than those contained herein exist or have been  
19 made by any Party with respect to the other Party or the subject matter hereof.

20 **7. GOVERNING LAW**

21 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
22 California and apply within the State of California. If Proposition 65 is repealed or is otherwise  
23 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall  
24 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
25 that, Covered Products are so affected.

26 **8. NOTICES**

27 8.1 Unless specified herein, all correspondence and notices required to be provided  
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
by the other party at the following addresses:

For Defendant:



1 Will Wagner  
2 Arnold & Porter  
3 Three Embarcadero Center | 10th Floor  
4 San Francisco, CA 94111-4024  
5 Will.Wagner@arnoldporter.com

6 For Plaintiff:

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

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

13 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

14 9.1 This Consent Judgment may be executed in counterparts and by facsimile or  
15 electronically (such as by PDF), each of which shall be deemed an original, and all of which, when  
16 taken together, shall constitute one and the same document.

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

19 10.1 Plaintiff agrees to comply with the requirements set forth in California Health &  
20 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
21 Defendant agrees it shall not oppose such Motion unless such Motion is materially inconsistent  
22 with the terms of this Consent Judgment.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
25 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
26 days, the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
28 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
its normal course on the trial court's calendar.

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**11. MODIFICATION AND ENFORCEMENT**

11.1 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. Notwithstanding the foregoing, if Plaintiff, the Attorney General, or any public enforcer represented by Brodsky Smith agrees to terms in a judicially entered consent judgment with any manufacturer of cosmetics as defined by California Health and Safety Code 109900 which permits a higher level of DEA in cosmetics without requiring an exposure warning, the Parties agree that Defendant shall be deemed in compliance with the terms of this Consent Judgment if it elects to adhere to such reformulation terms as provided in such other DEA judicially entered consent judgment.

11.2 If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment, the Parties shall meet and confer in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand, which shall not be less than thirty (30) days. No private enforcer other than Plaintiff may enforce the terms of this Consent Judgment.

**12. ATTORNEY'S FEES**

12.1 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.

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 certify that he or she is fully authorized by the Party he or she represents to execute

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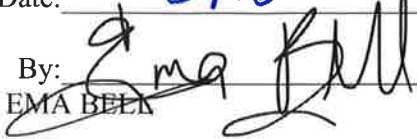
the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.


**AGREED TO:**

**AGREED TO:**

Date: 3/15/23

Date: 12/26/2022

By:   
EMA BELL

By:   
NO RINSE LABORATORIES, LLC

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

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

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