

1 Evan Smith (Bar No. SBN 242352)  
2 BRODSKY & SMITH  
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 SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 v.

14 IGLOO PRODUCTS CORP., TARGET  
15 CORPORATION,

16 Defendants.

Case No.: CGC-21-595920

**CONSENT JUDGMENT**

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 Igloo Products Corp. (“Igloo” or  
4 “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as  
5 a “Party.” Bell is an individual residing in California that 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. Igloo is alleged to be a person in the course of doing business for  
8 purposes 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) from its sales of Igloo Marine Ultra Square 24  
11 Can Coolers without providing a clear and reasonable exposure warning pursuant to Proposition  
12 65. Igloo denies these allegations. DEHP is listed under Proposition 65 as a chemical known to the  
13 State of California to cause cancer and reproductive toxicity.

14           1.3     **Notice of Violation/Complaint.** On or about October 12, 2020, Bell served Igloo,  
15 Target Corp., Target Brands, Inc., and various public enforcement agencies with documents entitled  
16 “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”),  
17 alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that  
18 use of Igloo Marine Ultra Square 24 Can Coolers expose users in California to DEHP. No public  
19 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On October 12,  
20 2021, Bell filed a complaint (the “Complaint”) in the matter.

21           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
23 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
24 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
25 of all claims which were or could have been raised in the Complaint based on the facts alleged  
26 therein and/or in the Notice.

1           1.5     Defendant denies the material factual and legal allegations contained in Bell’s  
2 Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent  
3 Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion, issue  
4 of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be  
5 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation  
6 of law, such being specifically denied by Defendant. Notwithstanding the allegations in the Notice,  
7 Igloo maintains that it has not knowingly manufactured, or caused to be manufactured, the Products  
8 for sale in California in violation of Proposition 65. However, this section shall not diminish or  
9 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent  
10 Judgment.

11           1.6     **No other notices.** Bell and her counsel represent and warrant that they have not  
12 prepared or served any other Notices under Prop. 65, or commenced any litigation, against Igloo  
13 through the Effective Date.

14     **2.     DEFINITIONS**

15           2.1     **Covered Products.** The term “Covered Products” means Igloo Marine Ultra Square  
16 24 Can Coolers that are manufactured, distributed and/or offered for sale in California by Igloo.

17           2.2     **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
18 entered as a Judgment of the Court.

19     **3.     INJUNCTIVE RELIEF: WARNINGS**

20           3.1     **Reformulation of Covered Products.** As of the date this Consent Judgment is  
21 signed by both Parties, and continuing thereafter, Covered Products that Igloo directly  
22 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
23 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
24 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
25 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §  
26 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
27 Product.

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

6           3.3     **Clear and Reasonable Warning.** As of the Effective Date, and continuing  
7 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be  
8 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or  
9 offers for sale in California that is not a Reformulated Product. There shall be no obligation for  
10 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to  
11 the Effective Date of this Consent Judgment. The warning shall consist of either the **Warning** or  
12 **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 di(2-  
15 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
16 cancer and birth defects or other reproductive harm. For more information go to  
www.P65Warnings.ca.gov.

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

19           ⚠ **WARNING:** Cancer and Reproductive Harm - 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, or on a placard, shelf tag, sign or electronic device or  
27 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
28 with other words, statements, or designs as to render it likely to be read and understood by an

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

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

15 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
16 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
17 Judgment or by complying with warning requirements adopted by OEHHA applicable to the  
18 product and the exposure at issue after the Effective Date.

19 **4. MONETARY TERMS**

20 4.1 **Civil Penalty.** Igloo shall pay \$2,000.00 as a Civil Penalty pursuant to Health and  
21 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
22 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
23 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

24 4.1.1 Within thirty (30) days of the Effective Date, Igloo shall issue two separate  
25 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and (b)  
26 “Brodsky & Smith in Trust for Bell” in the amount of \$500.00. Payment owed to Bell pursuant to  
27 this Section shall be delivered to the following payment address:  
28

1 Evan J. Smith, Esquire  
2 Brodsky & Smith  
3 Two Bala Plaza, Suite 805  
4 Bala Cynwyd, PA 19004

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

7 For United States Postal Service Delivery:

8 Mike Gyurics  
9 Fiscal Operations Branch Chief  
10 Office of Environmental Health Hazard Assessment  
11 P.O. Box 4010  
12 Sacramento, CA 95812-4010

13 For Non-United States Postal Service Delivery:

14 Mike Gyurics  
15 Fiscal Operations Branch Chief  
16 Office of Environmental Health Hazard Assessment  
17 1001 I Street  
18 Sacramento, CA 95814

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

21 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Igloo shall pay  
22 \$27,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete and final reimbursement for  
23 Bell's attorneys' fees and costs incurred, *inter alia*, as a result of investigating, bringing this matter  
24 to Igloo's attention, litigating and negotiating and obtaining judicial approval of this settlement in  
25 the public interest, pursuant to Code of Civil Procedure § 1021.5.

26 **5. RELEASE OF ALL CLAIMS**

27 5.1 This Consent Judgment is a full, final, and binding resolution between Bell and her  
28 past and current agents, representatives, attorneys, successors, and/or assigns ("Releasors"), acting  
on their own behalf, and on behalf of the public interest, and Igloo and its parents, shareholders,  
members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,  
subdivisions, subsidiaries, partners, sister companies, parent companies and affiliates, and their  
predecessors, successors and assigns, and all entities from whom they obtain and to whom they  
directly or indirectly distribute or sell Covered Products, including but not limited to Target

1 Corporation, Target Brands, Inc. manufacturers, suppliers, distributors, wholesalers, customers,  
2 licensors, licensees retailers, franchisees, and cooperative members, and their respective  
3 subsidiaries, affiliated entities and parents, franchisees, cooperative members and licensees  
4 (collectively “Releasees”), of all claims for violations of Proposition 65 based on exposure to  
5 DEHP from Covered Products manufactured, distributed, or sold by Igloo and Releasees prior to  
6 the Effective Date. It is the Parties’ intention that this Consent Judgment shall have preclusive effect  
7 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests  
8 or the public interest shall be permitted to pursue and/or take any action with respect to any violation  
9 of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to  
10 the Notice against Igloo and/or the Releasees related to the Covered Products (“Proposition 65  
11 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with  
12 Proposition 65 based on exposure to DEHP from the Covered Products. Third party internet sellers  
13 who do not provide a warning in compliance with §§ 3.4, above are expressly not covered by this  
14 release.

15           5.2     In addition to the foregoing, Bell, on behalf of herself, her past and current agents,  
16 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,  
17 hereby covenants not to sue and waives all rights to institute or participate in, directly or indirectly,  
18 any form of legal action and releases Igloo, and Releasees from any and all manner of actions,  
19 causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,  
20 liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever,  
21 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any  
22 alleged violations of Proposition 65 related to or arising from Covered Products manufactured,  
23 distributed, or sold by Igloo or Releasees. With respect to the foregoing waivers and releases in this  
24 paragraph, Bell hereby specifically waives any and all rights and benefits which she now has, or in  
25 the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,  
26 which provides as follows:

27           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
28           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1           EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
2           RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
3           MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
4           DEBTOR OR RELEASED PARTY.

5           5.3     Igloo waives any and all claims against Bell, her attorneys and other representatives,  
6           for any and all actions taken or statements made (or those that could have been taken or made) by  
7           Bell and her attorneys and other representatives, whether in the course of investigating claims or  
8           otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to  
9           Covered Products.

10          **6.     INTEGRATION**

11          6.1     This Consent Judgment contains the sole and entire agreement of the Parties and  
12          any and all prior negotiations and understandings related hereto shall be deemed to have been  
13          merged within it. No representations or terms of agreement other than those contained herein exist  
14          or have been made by any Party with respect to the other Party or the subject matter hereof.

15          **7.     GOVERNING LAW**

16          7.1     The terms of this Consent Judgment shall be governed by the laws of the State of  
17          California and apply within the State of California. In the event that Proposition 65 is repealed or  
18          is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
19          Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
20          to the extent that, Covered Products are so affected.

21          **8.     NOTICES**

22          8.1     Unless specified herein, all correspondence and notices required to be provided  
23          pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
24          class, (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on  
25          any party by the other party at the following addresses:

26          For Defendant:

27                 Michael Leslie  
28                 King & Spalding  
                  633 West Fifth Street, Suite 1600  
                  Los Angeles, CA 90071

              And



1 For Bell:

2 Evan Smith  
3 Brodsky & Smith  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 9.1 This Consent Judgment may be executed in counterparts and by facsimile, .pdf or  
10 electronic signature, each of which shall be deemed an original, and all of which, when taken  
11 together, shall constitute one and the same document.

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

13 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety  
14 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
15 Defendant agrees it shall support approval of such Motion.

16 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
17 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
18 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
19 days, the case shall proceed on its normal course.

20 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
21 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
22 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
23 its normal course on the trial court's calendar.

24 **11. MODIFICATION**

25 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
26 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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**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 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: 06/08/2022

By: \_\_\_\_\_  
EMA BELL

By:   
IGLOO PRODUCTS CORP.

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

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

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

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**AGREED TO:**

**AGREED TO:**

Date: 7/8/2022  
By:   
EMA BELL

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
IGLOO PRODUCTS CORP.

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

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

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