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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

EMA BELL,

Plaintiff,

v.

BOOTS RETAIL USA, INC., TARGET
CORPORATION,

Defendants.

Case No.: CGC-21-596197

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: October 17, 2024
Hearing Time: 9:30 AM
Complaint Filed: October 28, 2021

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 Boots Retail USA, Inc. dba No7 Beauty
4 Company North America (“Boots Retail” or “Defendant”) with Bell and Defendant collectively
5 referred to as the “Parties” and each of them as a “Party.” Bell is an individual residing in California
6 that seeks to promote awareness of exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in consumer products. Boots Retail is
8 alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Bell alleges that Defendant has exposed
11 individuals to diethanolamine (DEA) from its sales of *Soap & Glory*™ Thick & Fast Super Volume
12 mascara, UPC # 5045093617914, without providing a clear and reasonable exposure warning
13 pursuant to Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to the
14 State of California to cause cancer.

15 **1.3 Notice of Violation/Action.** On or about October 29, 2020, Bell served Target
16 Corporation, Target Brands, Inc. (collectively, “Target”), Boots Retail, and various public
17 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
18 Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing
19 to warn consumers that use of *Soap & Glory*™ Thick & Fast Super Volume mascara, UPC #
20 5045093617914, exposes users in California to DEA. No public enforcer has brought and is
21 diligently prosecuting the claims alleged in the Notice. On October 28, 2021, Bell filed a complaint
22 (the “Complaint”).

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

2 By execution of this Consent Judgment, Defendant denies the material allegations
3 contained in Bell's Notice and Complaint and maintains that all of the products it has sold and
4 distributed in California, including the Covered Products, have been, and are, in compliance with
5 all laws, and that it has not violated Proposition 65. Nothing in this Consent Judgment, nor
6 compliance with this Consent Judgment, shall constitute or be construed, considered, offered, or
7 admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Defendant,
8 its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any
9 administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the
10 allegations settled and compromised, nothing in this Consent Judgment shall prejudice, waive, or
11 impair any right, remedy, argument, or defense that the Parties may have against one another in
12 any other pending legal proceeding as to allegations unrelated to the Notice, Complaint or claims
13 released herein. This Section shall not, however, diminish or otherwise affect Defendant's
14 obligations, responsibilities, and duties under this Consent Judgment.

15 **2. DEFINITIONS**

16 2.1 **Covered Products.** The term "Covered Products" means *Soap & Glory*TM Thick &
17 Fast Super Volume mascara, UPC # 5045093617914, that is manufactured, distributed, shipped
18 into California and offered for sale in California by Boots Retail.

19 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
20 entered as a Judgment of the Court.

21 **3. INJUNCTIVE RELIEF: COMMITMENT NOT TO SELL**

22 3.1 **Commitment Not to Sell.** Commencing within ninety (90) days after the Effective
23 Date, and continuing thereafter, Defendant agrees that it shall not manufacture, distribute, sell, or
24 offer Covered Products for sale in California. Covered Products that have been manufactured,
25 packaged, or put into commerce within 90 days after the Effective Date shall be subject to the
26 release of liability pursuant to this Consent Judgment without regarding to when such Covered
27 Products were distributed or sold to customers.

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1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Boots Retail shall pay \$2,000.00 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, Boots Retail shall issue two
7 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
8 to (b) “Ema Bell” in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall
9 be delivered to the following payment address:

10 Evan J. Smith, Esquire
11 Brodsky Smith
12 Two Bala Plaza, Suite 805
 Bala Cynwyd, PA 19004

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

15 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

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

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

25 **4.2 Attorneys’ Fees.** Within ten (10) days of the Effective Date, Boots Retail shall pay
26 \$17,500.00 to Brodsky Smith as complete reimbursement for Bell’s attorneys’ fees and costs
27 incurred as a result of investigating, bringing this matter to the attention of Boots Retail, litigating
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1 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
2 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 Boots Retail, and its parents,
6 shareholders, members, directors, officers, managers, employees, representatives, agents,
7 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
8 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
9 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
10 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
11 retailers, including but not limited to, Target, and its parents, subsidiaries, and affiliates,
12 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of
13 Proposition 65 based on exposure to DEA from use of the Covered Products manufactured,
14 distributed, or sold by Boots Retail within 90 days after the Effective Date, as set forth in the Notice.
15 It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that no other
16 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
17 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
18 65 based on exposure to DEA from use of the Covered Products that was alleged in the Complaint,
19 or that could have been brought pursuant to the Notice against Boots Retail and the Downstream
20 Releasees (“Proposition 65 Claims”). Boots Retail’s compliance with the terms of this Consent
21 Judgment constitutes compliance with Proposition 65 by Boots Retail with regard to exposure to
22 DEA from use of 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 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 Boots Retail, Defendant Releasees, and Downstream Releasees from any and all
27 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
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1 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
2 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
3 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
4 Products manufactured, distributed, or sold by Boots Retail, Defendant Releasees or Downstream
5 Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell hereby
6 specifically waives any and all rights and benefits which she now has, or in the future may have,
7 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
8 follows:

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
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

13 5.3 Boots Retail waives any and all claims against Bell, her attorneys and other
14 representatives, for any and all actions taken, or statements made (or those that could have been
15 taken or made) by Bell and her attorneys and other representatives, whether in the course of
16 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
17 and with respect to Covered Products.

18 **6. INTEGRATION**

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

23 **7. NOTICE TO DEFENDANT**

24 7.1 Unless specified herein, all correspondence and notices required to be provided
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
26 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
27 by the other party at the following address:

28 For Defendant:

1 Alecia E. Cotton
2 Rogers Joseph O'Donnell
3 311 California St., 10th Fl.
4 San Francisco, CA 94104

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

7 **8. NOTICE TO PLAINTIFF**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following address:

12 For Bell:

13 Evan Smith
14 Brodsky Smith
15 9465 Wilshire Blvd., Ste. 300
16 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.

28 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
days, the case shall proceed on its normal course.

1 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
4 its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **12. RETENTION OF JURISDICTION**

9 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
10 Consent Judgment.

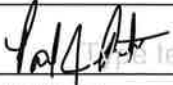
11 **13. AUTHORIZATION**

12 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
13 respective Parties and have read, understood, and agree to all of the terms and conditions of this
14 document and certify that he or she is fully authorized by the Party he or she represents to execute
15 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
16 explicitly provided herein each Party is to bear its own fees and costs.

17 **AGREED TO:**

18
19 Date: 8/29/24
20 By: 
21 EMA BELL

AGREED TO:

22 Date: July, 26 2024
23 By: 
24 BOOTS RETAIL USA, INC. dba No7
25 Beauty Company North America

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

27 Dated: _____

28 _____
Judge of the Superior Court