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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 v.

14 ROSS STORES, INC.,

15 Defendant.

Case No.: CGC-22-599660

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: May 3, 2024

Hearing Time: 9:30 AM

Complaint Filed: May 16, 2022

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) from its sales of Popatu clutch/purse, SKU
11 400223942857, without providing a clear and reasonable exposure warning pursuant to Proposition
12 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to
13 cause cancer and reproductive toxicity.

14 1.3 **Notice of Violation/Action.** On or about May 18, 2021, Bell served Ross, SMC
15 Holding, Inc., Posh International Ltd., and various public enforcement agencies with documents
16 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
17 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
18 customers that use of Popatu clutch/purse, SKU 400223942857, exposes users in California to
19 DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
20 Notice. On May 16, 2022, Bell filed a complaint (the “Complaint”).

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 Action 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 in the Notice.

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

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Popatu clutch/purse, SKU
10 400223942857, that are manufactured, distributed, shipped into California and offered for sale in
11 California by Ross.

12 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**


15 3.1 **Reformulation of Covered Products.** As of the Effective Date and continuing
16 thereafter, Ross shall not order any Covered Products for sale into California unless they are: (a)
17 reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
18 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated
19 Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
20 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

21 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
22 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
23 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
24 and 8270C or other methodology utilized by federal or state government agencies for the purpose
25 of determining the phthalate content in a solid substance.


26 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
27 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
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1 provided for all Covered Products that Defendant purchases for sale in California that is not a
2 Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered
3 Products that enter the stream of commerce prior to the date this Consent Judgment is signed by
4 both Parties. The warning shall consist of either the **Warning** or **Alternative Warning** described
5 in §§ 3.3(a) or (b), respectively:

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

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

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

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

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

26 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
27 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
28 Ross offers Products for sale to consumers in California. The requirements of this Section shall be

1 satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
2 “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the
3 warning to the purchaser prior to completing the purchase. To comply with this Section, Ross shall
4 (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so,
5 on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the
6 **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such
7 sellers with written notice in accordance with Title 27, California Code of Regulations, § 25600.2.
8 Third-party internet sellers of the Covered Product that have been provided with written notice in
9 accordance with Title 27, California Code of Regulations, § 25600.2 are not released in Section 5
10 of this Agreement if they fail to meet the warning requirements herein.

11 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
12 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
13 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
14 Covered Product and exposures at issue after the Effective Date. If consumer information is
15 provided in a foreign language, Ross shall provide the **Warning** in the foreign language.

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** Ross shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
18 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
19 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
20 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within fifteen (15) business days of the Effective Date, or upon receipt of
22 W-9 forms from the appropriate payees, whichever is later, Ross shall issue two separate checks
23 for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b) “Ema Bell”
24 in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be delivered to the
25 following payment address:

26 Evan J. Smith, Esquire
27 Brodsky & Smith
28 Two Bala Plaza, Suite 805
 Bala Cynwyd, PA 19004

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

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

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

17 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, or upon
18 receipt of W-9 forms from the appropriate payees, whichever is later, Ross shall pay \$16,500.00 to
19 Brodsky & Smith ("Brodsky Smith") as complete reimbursement for Bell's attorneys' fees and
20 costs incurred as a result of investigating, bringing this matter to the attention of Ross, litigating
21 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
22 Code of Civil Procedure § 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
25 on her own behalf, and on behalf of the public interest, and Ross, and its parents, shareholders,
26 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
27 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
28 successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to
whom they directly or indirectly distribute or sell Covered Products, including but not limited to
manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensee retailers,
franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of

1 Proposition 65 based on exposure to DEHP from use of the Covered Products manufactured,
2 distributed, or sold by Ross prior to the Effective Date as set forth in the Notice. It is the Parties'
3 intention that this Consent Judgment shall have preclusive effect such that no other actions by
4 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
5 permitted to pursue and take any action with respect to any violation of Proposition 65 based on
6 exposure to DEHP from use of the Covered Products that was alleged in the Complaint, or that
7 could have been brought pursuant to the Notice against Ross and the Downstream Releasees
8 ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment constitutes
9 compliance with Proposition 65 with regard to exposure to DEHP from use of the Covered
10 Products.

11 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
12 representatives, attorneys, and successors and assignees, and *not* in her representative capacity,
13 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
14 and releases Ross, Defendant Releasees, and Downstream Releasees from any and all manner of
15 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
16 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
17 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
18 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
19 manufactured, distributed, or sold by Ross, Defendant Releasees or Downstream Releasees. With
20 respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any
21 and all rights and benefits which she now has, or in the future may have, conferred by virtue of the
22 provisions of § 1542 of the California Civil Code, which provides as follows:

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

27 5.3 Ross waives any and all claims against Bell, her attorneys and other representatives,
28 for any and all actions taken, or statements made (or those that could have been taken or made) by

1 Bell and her attorneys and other representatives concerning the allegations in the Notice and
2 Complaint, whether in the course of investigating claims or otherwise seeking enforcement of
3 Proposition 65 against it in this matter, and with respect to Covered Products.

4 **6. INTEGRATION**

5 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
6 any and all prior negotiations and understandings related hereto shall be deemed to have been
7 merged within it. No representations or terms of agreement other than those contained herein exist
8 or have been made by any Party with respect to the other Party or the subject matter hereof.

9 **7. GOVERNING LAW**

10 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed or
12 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
13 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
14 to the extent that, Covered Products are so affected.

15 **8. NOTICES**

16 8.1 Unless specified herein, all correspondence and notices required to be provided
17 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
18 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
19 by the other party at the following addresses:

20 For Defendant:

21 General Counsel
22 Ross Stores, Inc.
23 5130 Hacienda Drive
Dublin, CA 94568

24 With a copy to:

25 Jeffrey Margulies
26 Norton Rose Fulbright US LLP
27 555 South Flower St., 41st Floor
Los Angeles, CA 90071

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, each of
10 which shall be deemed an original, and all of which, when taken together, shall constitute one and
11 the same document.

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

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

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

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

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 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

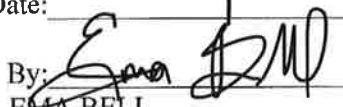
13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

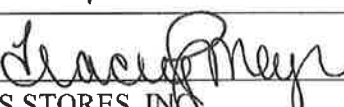
14. AUTHORIZATION

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: 3 / 15 / 24
By: 
EMA BELL

Date: 4.25.23
By: 
ROSS STORES, INC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court