

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 SHALOM INTERNATIONAL CORP.,
15 THE TJX COMPANIES, INC.,

16 Defendants.

Case No.: CGC-22-600485

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: November 24, 2023

Hearing Time: 9:30 AM

Complaint Filed: June 30, 2022

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell acting on behalf of the public interest (hereinafter “Bell”) and Shalom International Corp. (“Shalom” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Bell 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. Shalom 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 Jack Nicklaus hand creams 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 July 21, 2021, Bell served Shalom, Nicklaus Companies, LLC, The TJX Companies, Inc. (“TJX”), and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of the Jack Nicklaus hand creams (sold individually and/or as included in travel kits) expose users in California to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On June 30, 2022, 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 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 1.5 Defendant denies each and every material allegation contained in Bell’s Notice and
2 Complaint and maintains that it has not violated Proposition 65 and/or is not subject to that law.
3 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
4 finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
5 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of
6 law, or violation of law, such being specifically denied by Defendant. However, this section shall
7 not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this
8 Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Jack Nicklaus hand
11 creams (sold individually and/or as included in travel kits) that are manufactured, distributed and/or
12 offered for sale in California by Shalom.

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

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

16 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
17 signed by both Parties, and continuing thereafter, Covered Products that Defendant directly
18 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be DEA
19 Free Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
20 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
21 “DEA Free Reformulated Product” is a Covered Product that complies with the standard set forth
22 in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any
23 Reformulated Product.


24 3.2 **DEA Free Reformulation Standard.** To qualify as a “DEA Free Reformulated
25 Product” the Product must meet the following standard: DEA content that is not detectable (i.e.,
26 zero) or DEA that is below the Reporting Limit (defined herein) when analyzed pursuant to liquid
27 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy
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1 (ICP-MS) or other method of analysis utilized by the International Organization for Standardization
2 (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

3 3.2.1 **Reporting Limit.** The Covered Product “Reporting Limit¹” is 10 mg/kg.

4 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
5 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
6 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
7 imports, distributes, sells, or offers for sale in California that is not a DEA Free Reformulated
8 Product. There shall be no obligation for Defendant to provide a warning or notification for Covered
9 Products that enter the stream of commerce prior to the date this Consent Judgment is signed by
10 both Parties. The warning shall consist of either the **Warning** or **Alternative Warning** described
11 in §§ 3.3(a) or (b), respectively:

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

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

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

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

19 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
20 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
21 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
22 triangle with a black outline, except that if the sign or label for the Covered Product does not use
23 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
24 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
25 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or

26 ¹ The Reporting Limit is the lowest concentration at which DEA can be reported in a
27 sample of a Covered Product by a commercially reasonable accredited testing laboratory
28 employing LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative
and quantitative screening of cosmetics and cosmetic raw materials.

1 electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is
2 displayed with such conspicuousness, as compared with other words, statements, or designs as to
3 render it likely to be read and understood by an ordinary individual under customary conditions of
4 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
5 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
6 the use of the Covered Product and shall be at least the same size as those other safety warnings.

7 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
8 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
9 Shalom offers Covered Products for sale to consumers in California. The requirements of this
10 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink
11 using the word "WARNING," appears on the Covered Product display page, or by otherwise
12 prominently displaying the warning to the purchaser prior to completing the purchase. To comply
13 with this Section, Shalom shall (a) post the **Warning** or **Alternative Warning** on its own website
14 and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does
15 not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party
16 internet sellers, provide such sellers with notice pursuant to Title 27, California Code of
17 Regulations, Section 25600.2. Any entity to whom Defendant provides notice in accordance with
18 § 25600.2, but who did not provide the **Warning** or **Alternative Warning**, is not released in
19 Section 5.

20 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
21 compliance with this Consent Judgment and Proposition 65 by either adhering to §§ 3.3 and 3.4 of
22 this Consent Judgment or by complying with warning requirements adopted by the State of
23 California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the
24 Covered Product and the Exposures at issue after the Effective Date.

25 4. **MONETARY TERMS**

26 4.1 **Civil Penalty.** Shalom shall pay \$3,000.00 as a Civil Penalty pursuant to Health and
27 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
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1 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining
2 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety Code
3 § 25249.12(d).

4 4.1.1 Within ten (10) days of the Effective Date, Shalom shall issue two separate
5 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00; and to (b)
6 “Ema Bell” in the amount of \$750.00. Payment owed to Bell pursuant to this Section shall be
7 delivered to the following payment address:

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

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

14 For United States Postal Service Delivery:

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

20 For Non-United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95814

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

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

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
3 on her own behalf, and on behalf of the public interest, and Shalom, and its parents, shareholders,
4 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
5 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
6 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to
7 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
8 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers
9 (including but not limited to, TJX, its parents, subsidiaries, and affiliate companies), franchisees,
10 and cooperative members, and their predecessors, successors and assigns (“Downstream
11 Releasees”), of all claims for violations of Proposition 65 based on exposure to DEA from Covered
12 Products, with respect to any Covered Products manufactured, distributed, and/or sold by Shalom
13 prior to the Effective Date. It is the Parties’ intention that this Consent Judgment shall have
14 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
15 her, or its interests or the public interest shall be permitted to pursue and/or take any action with
16 respect to any violation of Proposition 65 based on exposure to DEA that was alleged in the
17 Complaint, or that could have been brought pursuant to the Notice against Shalom and/or the
18 Downstream Releasees of the Covered Products (“Proposition 65 Claims”). Shalom’s compliance
19 with the terms of this Consent Judgment constitutes compliance by Shalom with Proposition 65
20 regarding actual or alleged exposure to DEA in the Covered Products.

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

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

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

19 **6. INTEGRATION**

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

24 **7. GOVERNING LAW**

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

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Bao M. Vu
8 Stoel Rives LLP
9 1 Montgomery Street, Suite 3230
 San Francisco, CA 94104

10 And

11 For Bell:

12 Evan Smith
13 Brodsky Smith
14 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and
20 the same document.

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

23 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
24 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
25 Defendant agrees it shall support approval of such Motion.

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

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

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

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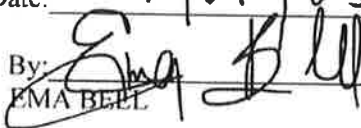
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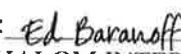
14. AUTHORIZATION

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: 9/21/23
By: 
EMA BELL

Date: 8/14/2023
By: 
SHALOM INTERNATIONAL CORP.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court