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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 DJECO-US, DJECO USA, LLC, BARNES &
15 NOBLE COLLEGE BOOKSELLERS, LLC,
16 BARNES & NOBLE BOOKSELLERS, INC.,

17 Defendants.

Case No.: CGC-22-601189

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: March 27, 2024

Hearing Time: 9:30 AM

Complaint Filed: August 10, 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”), DJECO-US, and DJECO USA, LLC
4 (collectively, “DJECO” or “Defendants”) with Bell and Defendants collectively referred to as the
5 “Parties” and each of them as a “Party.” Bell is an individual residing in California that seeks to
6 promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. DJECO is alleged to be a person
8 in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§
9 25249.6 et seq.

10 **1.2 Allegations and Representations.** Bell alleges that Defendants have exposed
11 individuals to di-isodecyl phthalate (DIDP) from their sales of DJECO Children’s Magic Coloring
12 sets, UPC # 3070900090637, without providing a clear and reasonable exposure warning pursuant
13 to Proposition 65. DIDP is listed pursuant to Proposition 65 as a chemical known to the State of
14 California to cause birth defects or other reproductive harm.

15 **1.3 Notice of Violation/Action.** On or about August 11, 2021, Bell served Defendants
16 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendants violated
18 Proposition 65 for failing to warn consumers and customers that use of DJECO Children’s Magic
19 Coloring sets, UPC # 3070900090637, expose users in California to DIDP. No public enforcer has
20 brought and is diligently prosecuting the claims alleged in the Notice. On August 10, 2022, Bell
21 filed a complaint (the “Complaint”).

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

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1 1.5 Defendants deny the material allegations contained in Bell’s Notice and Complaint
2 and maintain that they have not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendants 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 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendants. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendants under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means DJECO Children’s Magic
10 Coloring sets, UPC # 3070900090637, and substantially similar products that are manufactured,
11 distributed, shipped into California and offered for sale in California by DJECO.

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: COMMITMENT TO SELL PROPOSITION 65**
15 **COMPLIANT PRODUCTS**

16 3.1 **Covered Products.** As of the date this Consent Judgment is signed by both Parties,
17 and continuing thereafter, DJECO agrees that Covered Products that DJECO directly manufactures,
18 imports, distributes, sells, or offers for sale in California shall meet the standard set forth in § 3.1.1,
19 below.

20 3.1.1 **Compliant Products Standard.** “Compliant Products” shall mean that
21 Covered Products that contain concentrations less than or equal to 0.1% (1,000 parts per million
22 (ppm)) of DIDP when analyzed pursuant to U.S. Environmental Protection Agency testing
23 methodologies 3580A and 8270C or other methodology utilized by federal or state government
24 agencies for the purpose of determining the phthalate content in a solid substance.

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1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** DJECO shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
3 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
5 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, DJECO shall issue two separate
7 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Ema
8 Bell” in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall be delivered
9 to the following payment address:

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

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

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

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

1 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, DJECO shall pay
2 \$18,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
3 incurred as a result of investigating, bringing this matter to the attention of DJECO, litigating and
4 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
5 of Civil Procedure § 1021.5.

6 **5. RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
8 on her own behalf, and on behalf of the public interest, and DJECO, and its parents, shareholders,
9 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
10 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
11 successors and assigns ("DJECO Releasees"), and all entities from whom they obtain and to whom
12 they directly or indirectly distribute or sell Covered Products, including but not limited to
13 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
14 including but not limited to Barnes & Noble College Booksellers, LLC, Barnes & Noble
15 Booksellers, Inc., their predecessors, parents, subsidiaries, and affiliated entities under common
16 ownership, directors, officers, agents, employees, attorneys, franchisees, and cooperative members
17 ("collectively Downstream Releasees"), of all claims for violations of Proposition 65 based on
18 exposure to DIDP from use of the Covered Products manufactured, distributed, or sold by DJECO
19 prior to the Effective Date as set forth in the Notice. It is the Parties' intention that this Consent
20 Judgment shall have preclusive effect such that no other actions by private enforcers, whether
21 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and
22 take any action with respect to any violation of Proposition 65 based on exposure to DIDP from
23 use of the Covered Products that was alleged in the Complaint, or that could have been brought
24 pursuant to the Notice against DJECO and the Downstream Releasees ("Proposition 65 Claims").
25 The Parties agree and intend that compliance with the terms of this Settlement Agreement shall
26 constitute compliance with Proposition 65 with respect to exposures to DIDP from the Covered
27 Products.

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

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

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

22 **6. INTEGRATION**

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

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1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendants shall have no further obligations pursuant to this Consent Judgment with respect to,
6 and to the extent that, Covered Products are so affected.

7 **8. NOTICES**

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 addresses:

12 For Defendants:

13 Alexander M. Bullock
14 Kilpatrick Townsend & Stockton LLP
15 701 Pennsylvania Ave. NW, Ste. 200
 Washington, DC 20004

16 And

17 For Bell:

18 Evan Smith
19 Brodsky Smith
 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

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

3 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
4 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendants agree they shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: _____

Date: 3 January 2024

10
11 By: _____
EMA BELL

By: [Signature]
DJECO-US

AGREED TO:

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13
14 Date: 9 January 2024

15 By: [Signature]
16 DJECO USA, LLC

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

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20 Dated: _____

Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7
8 **AGREED TO:**

AGREED TO:

9 Date: 2/7/24

Date: _____

10 By: 
11 EMA BELL

By: _____
DJECO-US

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13 **AGREED TO:**

14 Date: _____

15 By: _____
16 DJECO USA, LLC

17
18 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

19
20 Dated: _____

Judge of Superior Court