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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 ROBELL RESEARCH, INC.,
15 EMINENT, INC.,

16 Defendants.

Case No.: CGC-23-605770

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 22, 2023

Hearing Time: 9:30 AM

Complaint Filed: April 11, 2023

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 Robell Research, Inc. (“Robell” 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. Robell is alleged to be a person in the course of doing business
8 for 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 *Supersmile*® 4 pc. flavor sampler
11 kits, UPC # 036179004976 without providing a clear and reasonable exposure warning pursuant to
12 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
13 California to cause cancer and birth defects or other reproductive harm.

14 **1.3 Notice of Violation/Action.** On or about May 19, 2022, Bell served Robell,
15 Eminent, Inc., and various public enforcement agencies with documents entitled “60-Day Notice
16 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
17 Defendant violated Proposition 65 for failing to warn consumers and customers that use of
18 *Supersmile*® 4 pc. flavor sampler kits, UPC # 036179004976, expose users in California to DEHP.
19 No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
20 April 11, 2023, 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 Action based on the facts alleged therein**
26 **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 *Supersmile*® 4 pc. flavor
10 sampler kits, UPC # 036179004976, that are manufactured, distributed, shipped into California and
11 offered for sale in California by Robell.

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.** Within ninety (90) days of the Effective
16 Date, and continuing thereafter, Covered Products that Robell directly manufactures, imports,
17 distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant
18 to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and
19 3.4, below. For purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product
20 that is in compliance with the standard set forth in § 3.2 below. The warning requirement set forth
21 in §§ 3.3 and 3.4 shall not apply to any Reformulated Product. There shall be no obligation to
22 reformulate or provide a warning for any Covered Product that entered the stream of commerce
23 prior to 90 days after the Effective Date.

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

3 3.3 **Clear and Reasonable Warning.** The warning shall consist of either the **Warning**
4 or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

12 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
13 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
14 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
15 triangle with a black outline, except that if the sign or label for the Covered Product does not use
16 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
17 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
18 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
19 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
20 displayed with such conspicuousness, as compared with other words, statements, or designs as to
21 render it likely to be read and understood by an ordinary individual under customary conditions of
22 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
23 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
24 the use of the Covered Product and shall be at least the same size as those other safety warnings.

25 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
26 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
27 Robell offers Products for sale to consumers in California. The requirements of this Section shall
28 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word

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

10 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
11 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
12 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
13 Covered Product and exposures at issue after the Effective Date. If consumer information is
14 provided in a foreign language, Robell shall provide the **Warning** in the foreign language.

15 4. MONETARY TERMS

16 4.1 **Civil Penalty.** Robell shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
17 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
18 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
19 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

20 4.1.1 Within ten (10) business days of the Effective Date, Robell shall issue two
21 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to
22 (b) “Ema Bell” in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be
23 delivered to the following payment address:

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

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

1 For United States Postal Service Delivery:

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

7 For Non-United States Postal Service Delivery:

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

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

15 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Robell shall
16 pay \$16,500.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
17 incurred as a result of investigating, bringing this matter to the attention of Robell, litigating and
18 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
19 of Civil Procedure § 1021.5.

20 **5. RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
22 on her own behalf, and on behalf of the public interest, and Robell, and its parents, shareholders,
23 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
24 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
25 successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to
26 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
27 Eminent, Inc., manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
28 retailers, including but not limited to, its parents, subsidiaries, and affiliates, franchisees, and
cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
based on exposure to DEHP from use of the Covered Products manufactured, distributed, or sold
by Robell prior to the Effective Date as set forth in the Notice. It is the Parties' intention that this

1 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
2 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
3 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
4 DEHP from use of the Covered Products that was alleged in the Complaint, or that could have been
5 brought pursuant to the Notice against Robell and the Downstream Releasees (“Proposition 65
6 Claims”). Robell’s compliance with the terms of this Consent Judgment constitutes compliance
7 with Proposition 65 by Robell with regard to exposure to DEHP from use of the Covered Products.

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

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

24 5.3 Robell waives any and all claims against Bell, her attorneys and other
25 representatives, for any and all actions taken, or statements made (or those that could have been
26 taken or made) by Bell and her attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
28 and with respect to Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
10 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
11 to the extent that, Covered Products are so affected.

12 **8. NOTICES**

13 8.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
16 by the other party at the following addresses:

17 For Defendant:

18 Michael J. Gleason
19 Hahn Loeser & Parks LLP
20 One America Plaza
21 600 West Broadway, Ste. 1500
22 San Diego, CA 92101

21 And

22 For Bell:

23 Evan Smith
24 Brodsky Smith
25 9595 Wilshire Blvd., Ste. 900
26 Beverly Hills, CA 90212

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
8 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

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1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

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

10 **AGREED TO:**

11
12 Date: _____

13 By: _____
14 EMA BELL

AGREED TO:

15
16 Date: 9/5/23

17 By: [Signature]
18 ROBELL RESEARCH, INC.

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

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21 Dated: _____

22 _____
23 Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 11/3/2023
By: 
EMABELL

Date: _____
By: _____
ROBELL RESEARCH, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court