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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 FRANCESCA'S ACQUISITION, LLC,  
15 FRANCESCA'S IP COMPANY, INC.,

16 Defendants.

Case No.: CGC-24-612588

**CONSENT JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: January 3, 2025

Hearing Time: 9:30 AM

Complaint Filed: February 23, 2024

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”) on the one hand, and Francesca’s Acquisition,  
4 LLC and Francesca’s IP Company, Inc. (collectively, “Francesca’s” or “Defendants” and each a  
5 “Defendant”) on the other hand, with Bell and Defendants collectively referred to as the “Parties”  
6 and each of them as a “Party.” Bell is an individual residing in California that seeks to promote  
7 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
8 hazardous substances contained in consumer products. Francesca’s is alleged to be a person in the  
9 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et  
10 seq.

11           1.2       **Allegations and Representations.** Bell alleges that Defendants have exposed  
12 individuals to lead from its sales of Design Clique set of two ceramic mugs, # 760619 without  
13 providing a clear and reasonable exposure warning pursuant to Proposition 65. Lead is listed  
14 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth  
15 defects or other reproductive harm.

16           1.3       **Notice of Violation/Action.** On or about May 19, 2023, Bell served Francesca’s  
17 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”  
18 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendants violated  
19 Proposition 65 for failing to warn consumers and customers that use of the Design Clique set of  
20 two ceramic mugs, # 760619 expose users in California to lead. No public enforcer has brought and  
21 is diligently prosecuting the claims alleged in the Notice. On February 23, 2024, Bell filed a  
22 complaint (the “Complaint”).

23           1.4       For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
24 jurisdiction over Defendants 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  
28

1 and in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Design Clique set of two  
11 ceramic mugs, # 760619 that are manufactured, distributed, shipped into California and offered for  
12 sale in California by Francesca's.

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 Products.** Commencing within sixty (60) days after the Effective  
17 Date, and continuing thereafter, Products that Francesca's directly manufactures, imports,  
18 distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant  
19 to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 -  
20 3.4, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that  
21 is in compliance with the standard set forth in § 3.2, below. The warning requirement set forth in  
22 §§ 3.3 - 3.4 shall not apply to any Reformulated Product.

1           **3.2 Reformulation Standard.** “Reformulated Products” shall mean Products that  
2 produce a wipe test result no higher than 1 microgram (µg) of lead when analyzed pursuant to  
3 NIOSH method no. 9100.

4           **3.3 Clear and Reasonable Warning.** Commencing within sixty (60) days after the  
5 Effective Date, 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 Products that Francesca’s manufacturers, imports,  
7 distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be  
8 no obligation for Francesca’s to provide an exposure warning for Products that entered the stream  
9 of commerce within sixty (60) days after the Effective Date. The warning shall consist of either the  
10 **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

12                   ⚠ **WARNING:** This product can expose you to chemicals including lead, which  
13 is known to the State of California to cause cancer and birth defects or other  
reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

14           (b)     **Alternative Warning:** Francesca’s may, but is not required to, use the  
15 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

16                   ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

1 and shall be at least the same size as those other safety warnings. If “consumer information,” as  
2 that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be  
3 amended from time to time, is provided in a foreign language, Francesca’s shall provide the  
4 **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning  
5 regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment  
6 (“OEHHA”).

7 In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or  
8 labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Francesca’s  
9 offers Products for sale to consumers in California. The requirements of this Section shall be  
10 satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word  
11 “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the  
12 warning to the purchaser prior to completing the purchase. To comply with this Section,  
13 Francesca’s shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has  
14 the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the  
15 ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet  
16 sellers (those sellers that it has a written contractual relationship with), provide such sellers with  
17 written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-  
18 party internet sellers of the Product that have been provided with written notice in accordance with  
19 Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this  
20 Agreement if they fail to meet the warning requirements of this Section.

21 **3.5 Compliance with Warning Regulations.** The Parties agree that Francesca’s shall  
22 be deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this  
23 Settlement Agreement or by complying with warning regulations adopted by the State of  
24 California’s OEHHA applicable to the Product and the exposure at issue within sixty (60) days  
25 after the Effective Date.

1     **4.     MONETARY TERMS**

2             4.1     **Civil Penalty.** Francesca’s shall pay two thousand dollars (\$2,000.00) as a Civil  
3     Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance  
4     with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and  
5     the remaining 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety  
6     Code § 25249.12(d).

7                     4.1.1     Within fifteen (15) days of the Effective Date, Francesca’s shall issue two  
8     separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of one thousand  
9     and five hundred dollars (\$1,500.00); and to (b) “Ema Bell” in the amount of five hundred dollars  
10    (\$500.00). Payment owed to Bell pursuant to this Section shall be delivered to the following  
11    payment address:

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

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

17                     For United States Postal Service Delivery:

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

21                     For Non-United States Postal Service Delivery:

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

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

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4.2 **Attorneys' Fees.** Within fifteen (15) days of the Effective Date, Francesca's shall pay twenty-two thousand dollars (\$22,000,00) to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention of Francesca's, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

**5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting on her own behalf, and on behalf of the public interest, and Francesca's, and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns ("Defendants 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, licensees retailers, including but not limited to Francesca's, and its parents, subsidiaries, and affiliates, franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to lead from use of the Covered Products manufactured, distributed, or sold by Francesca's within sixty (60) days after the Effective Date, as set forth in the Notice. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other actions by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and take any action with respect to any violation of Proposition 65 based on exposure to lead from use of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice against Francesca's and the Downstream Releasees ("Proposition 65 Claims"). Francesca's compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Francesca's with regard to exposure to lead from use of the Covered 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 Francesca's, Defendants Releasees, and Downstream Releasees from any and all  
5 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,  
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of  
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the  
8 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered  
9 Products manufactured, distributed, or sold by Francesca's, Defendants Releasees or Downstream  
10 Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell hereby  
11 specifically waives any and all rights and benefits which she now has, or in the future may have,  
12 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
13 follows:

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

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

23           **6.     INTEGRATION**

24           6.1     This Consent Judgment contains the sole and entire agreement of the Parties and  
25 any and all prior negotiations and understandings related hereto shall be deemed to have been  
26 merged within it. No representations or terms of agreement other than those contained herein exist  
27 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.

4     **8. NOTICES**

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

9 For Defendants:

10             Nicholas J. Hoffman  
11             McGuireWoods LLP  
12             355 S. Grand Ave., Ste. 4200  
13             Los Angeles, CA 90071

13 And

14 For Bell:

15             Evan Smith  
16             Brodsky Smith  
17             9465 Wilshire Blvd., Ste. 300  
18             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 Defendants agree it shall support approval of such Motion.

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

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

9 **11. MODIFICATION**

10           11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13           12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

15           12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
16 pursuant to law.

17 **13. RETENTION OF JURISDICTION**

18           13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
19 Consent Judgment.

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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: \_\_\_\_\_

Date: 11/4/2024

By: \_\_\_\_\_

By:  \_\_\_\_\_

EMA BELL

FRANCESCA'S ACQUISITION, LLC

**AGREED TO:**

Date: 11/4/2024

By:  \_\_\_\_\_

FRANCESCA'S IP COMPANY, INC.

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

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: 11/15/24

Date: \_\_\_\_\_

10 By: 

By: \_\_\_\_\_

11 EMA BELL

FRANCESCA'S ACQUISITION, LLC

**AGREED TO:**

12  
13  
14 Date: \_\_\_\_\_

15 By: \_\_\_\_\_

FRANCESCA'S IP COMPANY, INC.

16  
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18  
19 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court