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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 RAINBOW BEAUTY COMPANY, ADIR
15 INTERNATIONAL, LLC,

16 Defendants.

Case No.: CGC-24-615666

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 5, 2024

Hearing Time: 9:30 AM

Complaint Filed: June 20, 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”) and Rainbow Beauty Company (“Rainbow
4 Beauty” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each
5 of them as a “Party.” Bell is an individual residing in California that seeks to promote awareness
6 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. Rainbow Beauty is alleged to be a person in the course
8 of doing business 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 diethanolamine (DEA) from its sales of Callas Bright Plus liquid foundations, UPC
11 # 8809370161791 without providing a clear and reasonable exposure warning pursuant to
12 Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to the State of
13 California to cause cancer.

14 **1.3 Notice of Violation/Action.** Bell alleges that on or about June 26, 2023, Bell served
15 Rainbow Beauty, and various public enforcement agencies with documents entitled “60-Day
16 Notice 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 Callas
18 Bright Plus liquid foundations, UPC # 8809370161791 expose users in California to DEA. No
19 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On June
20 20, 2024, 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 Callas Bright Plus liquid
10 foundations, UPC # 8809370161791 that are manufactured, distributed, shipped into California and
11 offered for sale in California by Rainbow Beauty that expose users to DEA.

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: WARNINGS**

15 3.1 **Clear and Reasonable Warning.** Commencing with sixty (60) days after the
16 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
17 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,
18 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
19 to provide a warning for Covered Products that enter the stream of commerce prior to the date this
20 Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or
21 **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

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

26 (b) **Alternative Warning:** Rainbow Beauty may, but is not required to, use the
27 alternative short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

28 ⚠ **WARNING:** Cancer - www.P65Warnings.ca.gov.

1 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
2 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Covered Product does not use
5 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
6 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
7 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
8 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
9 displayed with such conspicuousness, as compared with other words, statements, or designs as to
10 render it likely to be read and understood by an ordinary individual under customary conditions of
11 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
12 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
13 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
14 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
15 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Rainbow
16 Beauty shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance
17 with applicable warning regulations adopted by OEHHA.

18 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
19 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
20 Rainbow Beauty offers Products for sale to consumers in California. The requirements of this
21 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink
22 using the word “**WARNING,**” appears on the product display page, or by otherwise prominently
23 displaying the warning to the purchaser prior to completing the purchase. To comply with this
24 Section, Rainbow Beauty shall (a) post the **Warning** or **Alternative Warning** on its own website
25 and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does
26 not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party
27 internet sellers, provide such sellers with written notice in accordance with Title 27, California
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1 Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been
2 provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2
3 are not released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

4 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
5 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
6 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
7 Product and exposures at issue.

8 **4. MONETARY TERMS**

9 **4.1 Civil Penalty.** Rainbow Beauty shall pay \$1,000.00 as a Civil Penalty pursuant to
10 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
11 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
12 the Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

13 **4.1.1** Within ten (10) days of the Effective Date, Rainbow Beauty shall issue two
14 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to
15 (b) “Ema Bell” in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be
16 delivered to the following payment address:

17 Evan J. Smith, Esquire
18 Brodsky Smith
19 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 1001 I Street
2 Sacramento, CA 95814

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

5 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Rainbow Beauty shall
6 pay \$16,500.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
7 incurred as a result of investigating, bringing this matter to the attention of Rainbow Beauty,
8 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
9 pursuant to Code of Civil Procedure § 1021.5.

10 **5. RELEASE OF ALL CLAIMS**

11 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
12 on her own behalf, and on behalf of the public interest, and Rainbow Beauty, and its parents,
13 shareholders, members, directors, officers, managers, employees, representatives, agents,
14 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
15 predecessors, successors and assigns ("Defendant Releasees"), and all entities to/from whom they
16 directly or indirectly received Covered Products or distributed or sold Covered Products, including
17 but not limited to manufacturers, distributors, wholesalers, customers, licensors, licensees retailers,
18 including but not limited to its parents, subsidiaries, and affiliates, franchisees, and cooperative
19 members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on
20 exposure to DEA from use of the Covered Products manufactured, distributed, or sold by Rainbow
21 Beauty within 90 days after the Effective Date ("Claim Period"). It is the Parties' intention that this
22 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
23 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
24 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
25 DEA from use of the Covered Products during the Claim Period that was alleged in the Complaint,
26 or that could have been brought pursuant to the Notice against Rainbow Beauty and the
27 Downstream Releasees ("Proposition 65 Claims"). Rainbow Beauty's compliance with the terms
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1 of this Consent Judgment constitutes compliance with Proposition 65 by Rainbow Beauty with
2 regard to exposure to DEA from use of the Covered Products.

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

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

22 5.3 Rainbow Beauty waives any and all claims against Bell, her attorneys and other
23 representatives, for any and all actions taken, or statements made (or those that could have been
24 taken or made) by Bell and her attorneys and other representatives, whether in the course of
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
26 and with respect to Covered Products.
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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. NOTICES**

7 7.1 Unless specified herein, all correspondence and notices required to be provided
8 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
9 class, (registered or certified mail) return receipt requested; (ii) overnight courier on any party by
10 the other party; (iii) or via email at the following addresses/email addresses:

11 For Defendant:

12 B. Christine Park
13 JKLAWUSA, APC
14 3435 Wilshire Blvd., Ste. 400
15 Los Angeles, CA 90010
16 Email: boksoonpark@gmail.com

17 And

18 For Bell:

19 Evan Smith
20 Brodsky Smith
21 9465 Wilshire Blvd., Ste. 300
22 Beverly Hills, CA 90212
23 Email: esmith@brodskysmith.com

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

26 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

27 8.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
28 which shall be deemed an original, and all of which, when taken together, shall constitute one and
the same document.

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

3 9.1 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 Defendant agrees it shall support approval of such Motion.

6 9.2 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 9.3 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 **10. MODIFICATION**

15 10.1 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 **11. ATTORNEY'S FEES**

18 11.1 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 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **12. RETENTION OF JURISDICTION**

23 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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13. AUTHORIZATION

13.1 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: 10/16/24

By: _____
EMA BELL

By: [Signature]
RAINBOW BEAUTY COMPANY

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 10 / 17 / 24

Date: _____

By: 
EMA BELL

By: _____
RAINBOW BEAUTY COMPANY

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court