

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9465 Wilshire Blvd., Ste. 300
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 COTTON ON USA INC.,

15 Defendant.

Case No.: CGC-24-616196

CONSENT JUDGMENT

Judge: Joseph M. Quinn

Dept.: 302

Hearing Date: February 25, 2025

Hearing Time: 9:30 AM

Complaint Filed: July 8, 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 Cotton On USA Inc. (“Cotton On” 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. Cotton On 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 lead from its sales of double handle remote mugs, UPC # 9352855465826 without
11 providing a clear and reasonable exposure warning pursuant to Proposition 65. Lead is listed
12 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth
13 defects or other reproductive harm.

14 1.3 **Notice of Violation/Action.** On February 2, 2024, Bell served Cotton On and
15 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
16 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
17 Proposition 65 for failing to warn consumers and customers that use of double handle remote mugs,
18 UPC # 9352855465826 exposes users in California to lead. No public enforcer has brought and is
19 diligently prosecuting the claims alleged in the Notice. On July 8, 2024, Bell filed a complaint (the
20 “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 double handle remote
10 mugs, UPC # 9352855465826 that are manufactured, distributed, shipped into California and
11 offered for sale in California by Cotton On.

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 Products.** Commencing within sixty (60) days after the Effective
16 Date, and continuing thereafter, Products that Cotton On 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 -
19 3.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that
20 is in compliance with the standard set forth in § 3.2, below. The warning requirement set forth in
21 §§ 3.3 - 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Products that
23 produce a wipe test result no higher than 1 microgram (µg) of lead when analyzed pursuant to
24 NIOSH method no. 9100.

25 3.3 **Clear and Reasonable Warning.** Commencing within 60 days after the Effective
26 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3
27 and 3.4 must be provided for all Products that Cotton On manufacturers, imports, distributes, sells,
28

1 or offers for sale in California that is not a Reformulated Product. There shall be no obligation for
2 Cotton On to provide an exposure warning for Products that entered the stream of commerce within
3 60 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative**
4 **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 lead, which
7 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.

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

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

11 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
12 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
13 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
14 triangle with a black outline, except that if the sign or label for the Products does not use the color
15 yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the
16 height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or
17 printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device
18 or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such
19 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
20 read and understood by an ordinary individual under customary conditions of purchase or use. The
21 **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling,
22 or instruction booklet that states other safety warnings, if any, concerning the use of the Product
23 and shall be at least the same size as those other safety warnings. If “consumer information,” as
24 that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be
25 amended from time to time, is provided in a foreign language, Cotton On shall provide the **Warning**
26 or **Alternative Warning** in the foreign language in accordance with applicable warning regulations
27 adopted by the State of California’s Office of Environmental Health Hazard Assessment
28 (“**OEHHA**”).

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

14 **3.5 Compliance with Warning Regulations.** The Parties agree that Cotton On shall be
15 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
16 Settlement Agreement or by complying with warning regulations adopted by the State of
17 California’s OEHHA applicable to the Product and the exposure at issue.

18 **4. MONETARY TERMS**

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

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

27 Evan J. Smith, Esquire
28 Brodsky Smith

1 Two Bala Plaza, Suite 805
2 Bala Cynwyd, PA 19004

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

5 For United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95814

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

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Cotton On shall pay
20 \$16,500.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
21 incurred as a result of investigating, bringing this matter to the attention of Cotton On, litigating
22 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
23 Code of Civil Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
26 on her own behalf, and on behalf of the public interest, and Cotton On, and its parents, shareholders,
27 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
28 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
successors and assigns ("Defendant Releasees"), and all entities 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
Cotton On, and its parents, subsidiaries, and affiliates, franchisees, and cooperative members

1 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to lead
2 from use of the Covered Products manufactured, distributed, or sold by Cotton On within 60 days
3 after the Effective Date, as set forth in the Notice. It is the Parties’ intention that this Consent
4 Judgment shall have preclusive effect such that no other actions by private enforcers, whether
5 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and
6 take any action with respect to any violation of Proposition 65 based on exposure to lead from use
7 of the Covered Products that was alleged in the Complaint, or that could have been brought pursuant
8 to the Notice against Cotton On and the Downstream Releasees (“Proposition 65 Claims”). Cotton
9 On’s compliance with the terms of this Consent Judgment constitutes compliance with Proposition
10 65 by Cotton On with regard to exposure to lead from use of the Covered Products.

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

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

27 5.3 Cotton On waives any and all claims against Bell, her attorneys and other
28 representatives, for any and all actions taken, or statements made (or those that could have been

1 taken or made) by Bell and her attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
3 and with respect to Covered Products.

4 **6. INTEGRATION**

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

9 **7. GOVERNING LAW**

10 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California.

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 Joseph Green
19 Kelley Drye & Warren LLP
20 3050 K St., Ste. 400
Washington, DC 20007

21 And

22 For Bell:

23 Evan Smith
24 Brodsky Smith
9465 Wilshire Blvd., Ste. 300
Beverly Hills, CA 90212

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

27
28

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.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. RETENTION OF JURISDICTION


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

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: 1 | 8 | 25
By: 
EMA BELL

Date: 12/12/2024
By: 
COTTON ON USA INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court