

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 AMPRO INDUSTRIES, INC., WALMART,
15 INC.,

16 Defendants.

Case No.: CGC-24-620483

CONSENT JUDGMENT

Judge: Christine Van Aken
Dept.: 301

Hearing Date: April 14, 2025

Hearing Time: 9:30 AM

Complaint Filed: December 10, 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 Ampro Industries, Inc. (“Ampro” 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. Ampro 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 diethanolamine (DEA) from its sales of *Long Aid*® curl activator gels, UPC #
11 077312103651 without providing a clear and reasonable exposure warning pursuant to Proposition
12 65. DEA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
13 cancer.

14 **1.3 Notice of Violation/Action.** On April 17, 2024, Bell served Ampro and various
15 public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to
16 Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65
17 for failing to warn consumers and customers that use of *Long Aid*® curl activator gels, UPC #
18 077312103651 expose users in California to DEA. No public enforcer has brought and is diligently
19 prosecuting the claims alleged in the Notice. On December 10, 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 *Long Aid*® curl activator
10 gels, UPC # 077312103651 that are manufactured, distributed, shipped into California and offered
11 for sale in California by Ampro 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: REFORMULATION AND/OR WARNINGS**

15 3.1 **Reformulation of Products.** Commencing within sixty (60) days after the Effective
16 Date, and continuing thereafter, Covered Products that Ampro 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 Settlement Agreement, a “DEA Free Reformulated Product” is a
20 Covered Product that is in compliance with the standard set forth in § 3.2, below. The warning
21 requirements set forth in §§ 3.3 and 3.4 shall not apply to any DEA Free Reformulated Product or
22 to any Covered Product manufactured within 60 days after the Effective Date.


23 3.2 **DEA Free Reformulation Standard.** To qualify as a “DEA Free Reformulated
24 Product” the Covered Product must meet the following standard: DEA content that is not detectable
25 (i.e., zero) or below the Reporting Limit (defined herein) when analyzed pursuant to liquid
26 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy
27
28

(ICP-MS) or other method of analysis utilized by the International Organization for Standardization (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials.


3.2.1 **Reporting Limit.** The “Reporting Limit¹” is 72 mg/kg.

3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

(b) **Alternative Warning:** Ampro may, but is not required to, use the alternative short-form warning² as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or

¹ The “Reporting Limit” the lowest concentration at which DEA can be detected in a sample of a Covered Product by an accredited testing laboratory employing LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

² An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

1 electronic device or automatic process only if such electronic device or automatic process provides
2 the **Warning or Alternative Warning** without the purchaser having to seek it out, providing that
3 the **Warning or Alternative Warning** is displayed with such conspicuousness, as compared with
4 other words, statements, or designs as to render it likely to be read and understood by an ordinary
5 individual under customary conditions of purchase or use. The **Warning or Alternative Warning**
6 may be contained in the same section of the packaging, labeling, or instruction booklet that states
7 other safety warnings, if any, concerning the use of the Covered Product and shall be at least the
8 same size as those other safety warnings. If “consumer information,” as that term is defined in Title
9 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is
10 provided in a foreign language, Ampro shall provide the **Warning or Alternative Warning** in the
11 foreign language in accordance with applicable warning regulations adopted by the State of
12 California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

13 In addition to affixing the **Warning or Alternative Warning** to the Covered Product’s
14 packaging or labeling, the **Warning or Alternative Warning** shall be posted on websites where
15 Ampro offers Products for sale to consumers in California. The requirements of this Section shall
16 be satisfied if the **Warning or Alternative Warning**, or a clearly marked hyperlink using the word
17 “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the
18 warning to the purchaser prior to completing the purchase. To comply with this Section, Ampro
19 shall (a) post the **Warning or Alternative Warning** on its own website and, if it has the ability to
20 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
21 the **Warning or Alternative Warning** on the websites of its third-party internet sellers, provide
22 such sellers with written notice in accordance with Title 27, California Code of Regulations, §
23 25600.2. Ampro agrees to provide known and authorized third-party internet sellers of the Covered
24 Products notice in accordance with Title 27, California Code of Regulations, § 25600.2.

25 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
26 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
27
28

Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered Product and exposures at issue.

4. MONETARY TERMS

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

4.1.1 Within ten (10) days of the Effective Date, Ampro shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b) "Ema Bell" in the amount of \$500.00. Payment owed to Bell pursuant to this Section shall be delivered to the following payment address:

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

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):

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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.

4.2 Attorneys' Fees. Within ten (10) days of the Effective Date, Ampro shall pay \$23,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs

1 incurred as a result of investigating, bringing this matter to the attention of Ampro, litigating and
2 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
3 of Civil Procedure § 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
6 on her own behalf, and on behalf of the public interest, and Ampro, and its parents, shareholders,
7 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
8 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
9 successors and assigns (“Defendant Releasees”), and all entities to whom they obtain they directly
10 or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
11 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, including but not
12 limited to Walmart, Inc., and its parents, subsidiaries, and affiliates, franchisees, and cooperative
13 members (“Downstream Releasees”), of all claims for violations of Proposition 65 based on
14 exposure to DEA from use of the Covered Products manufactured, distributed, or sold by Ampro
15 within 60 days after the Effective Date as set forth in the Notice. It is the Parties’ intention that this
16 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
17 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
18 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
19 DEA from use of the Covered Products that was alleged in the Complaint, or that could have been
20 brought pursuant to the Notice against Ampro and the Downstream Releasees (“Proposition 65
21 Claims”). Ampro’s compliance with the terms of this Consent Judgment constitutes compliance
22 with Proposition 65 by Ampro with regard to exposure to DEA from use of the Covered Products.

23 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
24 representatives, attorneys, and successors and assignees, and not in her representative capacity,
25 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
26 and releases Ampro, Defendant Releasees, and Downstream Releasees from any and all manner of
27 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
28

1 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
2 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
3 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
4 manufactured, distributed, or sold by Ampro, Defendant Releasees or Downstream Releasees. With
5 respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any
6 and all rights and benefits which she now has, or in the future may have, conferred by virtue of the
7 provisions of § 1542 of the California Civil Code, which provides as follows:

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

12 5.3 Ampro waives any and all claims against Bell, her attorneys and other
13 representatives, for any and all actions taken, or statements made (or those that could have been
14 taken or made) by Bell and her attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
16 and with respect to Covered Products.

17 **6. INTEGRATION**

18 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
19 any and all prior negotiations and understandings related hereto shall be deemed to have been
20 merged within it. No representations or terms of agreement other than those contained herein exist
21 or have been made by any Party with respect to the other Party or the subject matter hereof.

22 **7. NOTICES**

23 7.1 Unless specified herein, all correspondence and notices required to be provided
24 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
25 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
26 by the other party at the following addresses:

27 For Defendant:

28 Barbara Adams

1 Hogan Lovells US LLP
2 4 Embarcadero Center, Ste. 3500
3 San Francisco, CA 94111

4 And

5 For Bell:

6 Evan Smith
7 Brodsky Smith
8 9465 Wilshire Blvd., Ste. 300
9 Beverly Hills, CA 90212

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

12 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

13 8.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
14 which shall be deemed an original, and all of which, when taken together, shall constitute one and
15 the same document.

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

18 9.1 Bell agrees to comply with the requirements set forth in California Health & Safety
19 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
20 Defendant agrees it shall support approval of such Motion.

21 9.2 This Consent Judgment shall not be effective until it is approved and entered by the
22 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
23 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
24 days, the case shall proceed on its normal course.

25 9.3 If the Court approves this Consent Judgment and is reversed or vacated by an
26 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
27 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
28 its normal course on the trial court's calendar.

10. MODIFICATION

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

1 **11. ATTORNEY'S FEES**

2 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **12. RETENTION OF JURISDICTION**

7 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **13. AUTHORIZATION**

10 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: _____

Date: 2/20/25

18 By: _____
19 EMA BELL

By: Jonathan Reicher
AMPRO INDUSTRIES, INC.

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

24 _____
25 Judge of Superior Court

1 **11. ATTORNEY'S FEES**

2 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **12. RETENTION OF JURISDICTION**

7 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **13. AUTHORIZATION**

10 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: 2/21/25

Date: _____

18 By: [Signature]

By: _____

19 EMA BELL

AMPRO INDUSTRIES, INC.

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

24 Judge of Superior Court