

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 CYMA ORCHIDS CORPORATION,

15 Defendant.

Case No.: CGC-25-621750

CONSENT JUDGMENT

Judge: Joseph M. Quinn

Dept.: 302

Hearing Date: May 20, 2025

Hearing Time: 9:30 AM

Complaint Filed: January 24, 2025

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 Cyma Orchids Corporation (“Cyma” 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. Cyma is alleged to be a person in the course of doing business for
8 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 blue elephant succulent planters, UPC # 880748010338 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 May 13, 2024, Bell served Cyma and various public
15 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
16 Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing
17 to warn consumers and customers that use of blue elephant succulent planters, UPC #
18 880748010338 exposes users in California to lead. No public enforcer has brought and is diligently
19 prosecuting the claims alleged in the Notice. On January 24, 2025, Bell filed a complaint (the
20 “Complaint” or “Action”).

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" or "Products" means blue
10 elephant succulent planters, UPC # 880748010338 that are manufactured, distributed, shipped into
11 California and offered for sale in California by Cyma.

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 Cyma directly manufactures, imports, distributes,
17 sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 3.2,
18 below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 - 3.4, below.
19 For purposes of this Consent Judgment, a "Reformulated Product" is a Product that is in compliance
20 with the standard set forth in § 3.2, below. The warning requirement set forth in §§ 3.3 - 3.4 shall
21 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 Cyma manufacturers, imports, distributes, sells, or
28

1 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
2 Cyma to provide an exposure warning for Products that entered the stream of commerce within 60
3 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:** Cyma may, but is not required to, use the alternative
9 short-form warning¹ 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 only if such electronic device or automatic process provides the **Warning** or
19 **Alternative Warning** without the purchaser having to seek it out, provided that the **Warning** or
20 **Alternative Warning** is displayed with such conspicuousness, as compared with other words,
21 statements, or designs as to render it likely to be read and understood by an ordinary individual
22 under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be
23 contained in the same section of the packaging, labeling, or instruction booklet that states other
24 safety warnings, if any, concerning the use of the Product and shall be at least the same size as
25 those other safety warnings. If “consumer information,” as that term is defined in Title 27,
26 California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is

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

1 provided in a foreign language, Cyma shall provide the **Warning or Alternative Warning** in the
2 foreign language in accordance with applicable warning regulations adopted by the State of
3 California's Office of Environmental Health Hazard Assessment ("OEHHA").

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

17 **3.5 Compliance with Warning Regulations.** The Parties agree that Cyma shall be
18 deemed to be in compliance with this Consent Judgment by either adhering to § 3 of this Settlement
19 Agreement or by complying with warning regulations adopted by the State of California's OEHHHA
20 applicable to the Product and the exposure at issue.

21 **4. MONETARY TERMS**

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

26 **4.1.1** Within the later of either a) ten (10) days of the Effective Date or b) 90
27 days from the date this Consent Judgment is signed by the parties Cyma shall issue two separate
28

1 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b) "Ema
2 Bell" in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be delivered
3 to the following payment address:

4 Evan J. Smith, Esquire
5 Brodsky Smith
6 Two Bala Plaza, Suite 805
7 Bala Cynwyd, PA 19004

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

10 For United States Postal Service Delivery:

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

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 1001 I Street
21 Sacramento, CA 95814

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

24 4.2 **Attorneys' Fees.** Within the later of either a) ten (10) days of the Effective Date or
25 b) 90 days from the date this Consent Judgment is signed by the parties, Cyma shall pay \$18,000.00
26 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs incurred as a
27 result of investigating, bringing this matter to the attention of Cyma, litigating and negotiating and
28 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
Procedure § 1021.5.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
31 on her own behalf, and on behalf of the public interest, and Cyma, and its parents, shareholders,
32 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,

1 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
2 successors and assigns ("Defendant Releasees"), and all entities to whom they directly or indirectly
3 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
4 distributors, wholesalers, customers, licensors, licensees retailers, including but not limited to
5 Cyma, and its parents, subsidiaries, and affiliates, franchisees, and cooperative members
6 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to lead
7 from use of the Covered Products manufactured, distributed, or sold by Cyma within 60 days after
8 the Effective Date, as set forth in the Notice. It is the Parties' intention that this Consent Judgment
9 shall have preclusive effect such that no other actions by private enforcers, whether purporting to
10 act in his, her, or its interests or the public interest shall be permitted to pursue and take any action
11 with respect to any violation of Proposition 65 based on exposure to lead from use of the Covered
12 Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice
13 against Cyma and the Downstream Releasees ("Proposition 65 Claims"). Cyma's compliance with
14 the terms of this Consent Judgment constitutes compliance with Proposition 65 by Cyma with
15 regard to exposure to lead from use of the Covered Products.

16 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
17 representatives, attorneys, and successors and assignees, and not in her representative capacity,
18 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
19 and releases Cyma, Defendant Releasees, and Downstream Releasees from any and all manner of
20 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
21 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
22 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
23 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
24 manufactured, distributed, or sold by Cyma, Defendant Releasees or Downstream Releasees. With
25 respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any
26 and all rights and benefits which she now has, or in the future may have, conferred by virtue of the
27 provisions of § 1542 of the California Civil Code, which provides as follows:
28

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

7 5.3 Cyma waives any and all claims against Bell, her attorneys and other
8 representatives, for any and all actions taken, or statements made (or those that could have been
9 taken or made) by Bell and her attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
11 and with respect to Covered Products.

12 **6. INTEGRATION**

13 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
14 any and all prior negotiations and understandings related hereto shall be deemed to have been
15 merged within it. No representations or terms of agreement other than those contained herein exist
16 or have been made by any Party with respect to the other Party or the subject matter hereof.

17 **7. GOVERNING LAW**

18 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California and apply within the State of California.

20 **8. NOTICES**

21 8.1 Unless specified herein, all correspondence and notices required to be provided
22 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
23 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
24 by the other party at the following addresses:

25 For Defendant:

26 Ho-El Park, Esq.
27 Law Office of Ho-El Park, P.C.
28 3230 E. Imperial Hwy., Ste. 300
Brea, CA 92821

For Bell:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300

1 Beverly Hills, CA 90212

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

4 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

5 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
6 which shall be deemed an original, and all of which, when taken together, shall constitute one and
7 the same document.

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

10 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
11 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
12 Defendant agrees it shall support approval of such Motion.

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

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

21 **11. MODIFICATION**

22 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
23 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

24 **12. ATTORNEY'S FEES**

25 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
26 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

27 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
28 pursuant to law.

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.

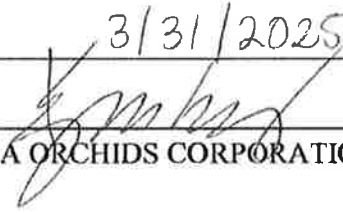
10 **AGREED TO:**

AGREED TO:

11
12 Date: _____

Date: 3/31/2025

13 By: _____

By:  _____

14 EMA BELL

CYMA ORCHIDS CORPORATION

15
16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17
18 Dated: _____

Judge of Superior Court

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10 **AGREED TO:**

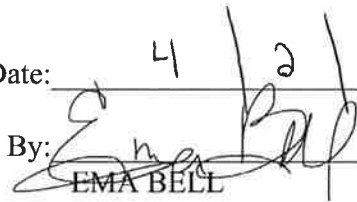
AGREED TO:

11
12 Date:

4 / 2 / 25

Date:

13 By:

14 
EMMA BELL

By:

CYMA ORCHIDS CORPORATION

15
16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17
18 Dated:

Judge of Superior Court