



ENDORSED

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ALAMEDA COUNTY

APR 15 2016

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

9
10 EMA BELL,
11
12 Plaintiff,
13 vs.
14 COST PLUS, INC. AND COST PLUS
15 WORLD MARKET,
16
17 Defendants.

Case No. RG15786280
^{RBM}
~~PROPOSED~~ CONSENT JUDGMENT
Judge: Rennis B. MacLaren
Joana Petroc
Dept.: ~~16~~ 25
Hearing Date: April 12, 2016
Hearing Time: 9:00 AM
Reservation #: R-1698390

1 **1. Introduction**

2 1.1 On July 8, 2015, Ema Bell ("Bell") served Cost Plus, Inc. dba Cost Plus World
3 Market (collectively, "Cost Plus"), and various public enforcement agencies with a document
4 entitled "Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*" (the
5 "Notice"). The Notice provided Cost Plus and such others, including public enforcers, with
6 notice that alleged that Cost Plus was in purported violation of California Health & Safety Code §
7 25249.6 ("Proposition 65") for failing to warn consumers and customers that certain ceramic
8 tableware products, including but not limited to a) Shanghai SP 4A, UPC No. 200477030, and b)
9 PASSARO SLD PLT, UPC No. 24328524 ("Leaded Ceramic Tableware"), exposed users in
10 California to lead. No public enforcer has diligently prosecuted the allegations set forth in the
11 Notice.

12 1.2 On September 17, 2015, Bell filed a Complaint for Civil Penalties and Injunctive
13 Relief ("Complaint") in the Alameda County Superior Court (the "Court"), Case
14 No.RG15786280, against Cost Plus, alleging violations of Proposition 65 with respect to the
15 Leaded Ceramic Tableware (the "Action").

16 1.3 Cost Plus is a corporation that employs more than ten persons under California
17 Health and Safety Code §25249.6 and offered the Leaded Ceramic Tableware for sale within the
18 State of California.

19 1.4 Bell's Complaint alleges, among other things, that Cost Plus sold the Leaded
20 Ceramic Tableware in California and/or to California citizens, that the Leaded Ceramic
21 Tableware exposed users to lead, and that the resulting exposure violated provisions of
22 Proposition 65, by knowingly and intentionally exposing persons to a chemical known to the
23 State of California to cause cancer, birth defects or other reproductive harm, without first
24 providing a clear and reasonable warning to such individuals.

25 1.5 For purposes of this Consent Judgment, the term "Leaded Ceramic Tableware"
26 shall be defined as ceramic tableware, including but not limited to, plates, spoons, cups, bowls,
27 mugs and tumblers intended for the service or storage of food or beverages, which contain lead,
28 and that are distributed, marketed and/or sold by Cost Plus in California, whether or not the

1 products bear Cost Plus labels.

2 1.6 For purposes of this Consent Judgment only, the parties stipulate that this Court
3 has jurisdiction over the allegations of violations contained in the Complaint and personal
4 jurisdiction over Cost Plus as to the acts alleged in the Complaint, that venue is proper in the
5 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a
6 resolution of the allegations contained in the Complaint.

7 1.7 The parties enter into this Consent Judgment pursuant to a full settlement and
8 release of disputed claims between the parties as alleged in the Complaint for the purpose of
9 avoiding prolonged litigation. By execution of this Consent Judgment, Cost Plus does not admit
10 any violation of Proposition 65 and specifically denies that it has committed any such violation.
11 Nothing in this Consent Judgment shall be construed as an admission by Cost Plus of any fact,
12 issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be
13 construed as an admission by Cost Plus of any fact, issue of law, or violation of law. Nothing in
14 this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that Cost
15 Plus may have in any other future legal proceeding. However, this paragraph shall not diminish
16 or otherwise affect the obligations, responsibilities and duties of Cost Plus under this Consent
17 Judgment.

18 1.8 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
19 date that the Consent Judgment is entered by the Court.

20 2. Injunctive Relief

21 2.1 Commencing 180 days after the Effective Date, and continuing thereafter, Cost
22 Plus shall only sell or offer for sale in California reformulated Leaded Ceramic Tableware
23 pursuant to Section 2.2, or Leaded Ceramic Tableware that is labeled with a clear and reasonable
24 warning pursuant to Section 2.3. Cost Plus shall have no obligation to label Leaded Ceramic
25 Tableware that entered the stream of commerce prior to the Effective Date. For purposes of this
26 Consent Judgment, a "Reformulated Leaded Ceramic Tableware" product is Leaded Ceramic
27 Tableware that is in compliance with the standard set forth below in section 2.2.

28 2.2 "Reformulated Leaded Ceramic Tableware" shall mean Leaded Ceramic

1 Tableware that contains a) less than or equal to 0.226 parts per million ("ppm") of lead if the
2 product is "flatware"¹, and/or b) less than or equal to 0.100 ppm of lead if the product is
3 "hollowware" when analyzed pursuant to the Official Methods of Analysis of the Association of
4 Official Analytical Chemists, 15th Edition (1990), Method 973.32, "Cadmium and Lead in
5 Earthenware: Atomic Absorption Spectrophotometric Method, Final Action (1977),
6 AOAC/ASTM Method" ("Lead Leaching Test").

7 2.3 Commencing 180 days after the Effective Date, Cost Plus shall, for all Leaded
8 Ceramic Tableware it sells in California that is not Reformulated Leaded Ceramic
9 Tableware, provide clear and reasonable warnings in any manner specified in Title 27,
10 California Code of Regulations, Article 6, §§ 25600, *et seq.*

11 2.4 The warning requirements set forth in Section 2.3 shall not apply to any
12 Reformulated Leaded Ceramic Tableware.

13 3. Entry of Consent Judgment

14 3.1 The parties hereby request that the Court promptly approve and enter this Consent
15 Judgment. Upon entry of this Consent Judgment, Bell and Cost Plus waive their respective rights
16 to a hearing or trial on the allegations of the Bell Complaint and Notice which are at issue in the
17 Action.

18 3.2 In the event that the California Attorney General objects or otherwise comments
19 on one or more provisions of this Consent Judgment, Bell and Cost Plus agree to take reasonable
20 steps to satisfy such concerns or objections.

21 4. Matters Covered By This Consent Judgment

22 4.1 This Consent Judgment is a final and binding resolution between Bell, acting on
23 her own behalf, and on behalf of the public and in the public interest, and Cost Plus, and shall
24 have preclusive effect such that no other person or entity, whether purporting to act in his, her, or
25 its interests or the public interest shall be permitted to pursue and/or take any action with respect
26 to: (i) any violation of Proposition 65 that was alleged in the Complaint, or that could have been
27 brought pursuant to the Notice; or (ii) any other statutory or common law claim, to the fullest
28 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any

¹ Flatware (depth < 25 mm)

1 person or entity against Cost Plus based on its alleged exposure of persons to the Leaded Ceramic
2 Tableware, or its alleged failure to provide a clear and reasonable warning of exposure to such
3 individuals; or (iii) as to alleged exposures to the Leaded Ceramic Tableware, any other claim
4 based on whole or in part on the facts alleged in the Complaint and the Notice, whether or not
5 based on actions committed by Cost Plus. As to alleged exposures to the Leaded Ceramic
6 Tableware, compliance with the terms of this Consent Judgment resolves any issue, now and in
7 the future, and is deemed sufficient to satisfy all obligations concerning, compliance by Cost Plus
8 with the requirements of Proposition 65 with respect to the Leaded Ceramic Tableware, and any
9 alleged resulting exposure.

10 4.2 As to alleged exposures to the Leaded Ceramic Tableware, Bell waives all rights
11 to institute any form of legal action, and releases all claims against Cost Plus (including its
12 parents, subsidiaries or affiliates, and assigns of any of them, who may use, maintain, distribute or
13 sell the Leaded Ceramic Tableware) (collectively, "Releasees"), whether under Proposition 65 or
14 otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or in part,
15 the Leaded Ceramic Tableware or the Action, including but not limited to any exposure to, or
16 failure to warn with respect to, the Leaded Ceramic Tableware (referred to collectively in this
17 Section as the "Claims"). In furtherance of the foregoing, as to alleged exposures to the Leaded
18 Ceramic Tableware, Bell waives any and all rights and benefits which she now has, or in the
19 future may have, conferred upon her with respect to the Claims by virtue of the provisions of §
20 1542 of the California Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT
23 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
24 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
25 DEBTOR.

26 Bell understands and acknowledges that the significance and consequence of this waiver of
27 California Civil Code § 1542 is that even if Bell suffers future damages arising out of or resulting
28 from, or related directly or indirectly to, in whole or in part, the Leaded Ceramic Tableware,

1 including but not limited to any exposure to, or failure to warn with respect to exposure to, the
2 Leaded Ceramic Tableware, Bell will not be able to make any claim for those damages against
3 Releasees.

4 5. Enforcement of Judgment

5 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
6 hereto. The parties may, by noticed motion or order to show cause before the Court, giving the
7 notice required by law, enforce the terms and conditions contained herein. In any proceeding
8 brought by either party to enforce this Consent Judgment, such party may seek whatever fines,
9 costs, penalties or remedies as may be provided by law for any violation of Proposition 65 or this
10 Consent Judgment.

11 5.2 In the event that, at any time following 180 days after notice of entry of this
12 Consent Judgment by the Court is filed and served on Cost Plus, Bell and/or her agents, attorneys,
13 assigns, or any other person acting in the public interest under Health & Safety Code § 25249.7(d)
14 and/or Business & Professions Code § 17200 identifies one or more retail stores owned or
15 principally operated by Cost Plus in the State of California (hereinafter, "retail outlet") at which
16 required warnings for Leaded Ceramic Tableware are not being or were not given, or at which
17 Leaded Ceramic Tableware that does not meet the reformulation requirements of Section 7 of this
18 Consent Judgment, are or were sold, Bell or such person shall notify Cost Plus in writing of such
19 alleged failure(s) to warn or reformulate (the "Probationary Notice of Default"): The
20 Probationary Notice of Default shall be sent by certified mail to the person identified in Section
21 8.1 of this Consent Judgment to receive notices for Cost Plus. The Probationary Notice shall set
22 forth the alleged violation(s) and the date the alleged violation(s) was or were observed, the retail
23 outlet(s) in question, a description of the product giving rise to the alleged violation(s) with
24 sufficient detail to allow Cost Plus to determine the basis for the claim being asserted, and some
25 other form of documentary evidence specifically in support of the allegation that warnings are
26 required and have not been posted or given or that the reformulation requirements have not been
27 complied with.

28 5.3 In the event Cost Plus corrects the alleged default(s) within sixty (60) days of

1 receiving the Probationary Notice of Default, Bell or the notifying person shall take no further
2 enforcement action with respect to such violation(s). In the event Cost Plus fails to correct such
3 alleged default(s) within sixty (60) days following the Probationary Notice of Default from Bell
4 or other notifying person, subject to the provisions of Section 5.4 of this Consent Judgment, Cost
5 Plus shall pay Bell or the notifying person, as a stipulated penalty for failure to remedy the
6 alleged default(s), the amount of Five Thousand Dollars (\$5,000.00).

7 5.4 In the event that Cost Plus wishes to contest the allegations contained in the
8 Probationary Notice of Default served pursuant to Section 5.2, it shall notify Bell or notifying
9 person of such in writing within thirty (30) days of its receipt of the Probationary Notice of
10 Default. Cost Plus may provide any documentary evidence to Bell or notifying person in support
11 of its position. In the event that, upon a good faith review of the evidence, Bell or the notifying
12 person agrees with Cost Plus' position, he, she or it shall take no further action hereunder. In the
13 event that Cost Plus provides documentary evidence, and Bell or notifying person disagrees with
14 Cost Plus' position, he, she or it shall, within thirty (30) days notify Cost Plus of such and provide
15 Cost Plus, in writing, with the reasons for its disagreement, including supporting test results.
16 Thereafter, the parties shall meet and confer to attempt to resolve their dispute on mutually
17 acceptable terms; if no such resolution results, (a) Bell or the notifying person may by motion or
18 order to show cause before the Superior Court of Alameda County, seek to enforce the terms and
19 conditions contained in this Consent Judgment, or (b) Bell or the notifying person may initiate an
20 enforcement action for new violations pursuant to Health & Safety Code § 252497(d) and/or
21 Business & Professions Code § 17204.

22 6. Modification of Judgment

23 6.1 This Consent Judgment may be modified only by written agreement of the parties
24 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
25 provided by law and upon an entry of a modified Consent Judgment by the Court.

26 6.2 Should any court enter final judgment in a case brought by Bell, the People or any
27 other person acting in the public interest under Health & Safety Code § 25249.7(d) and/or
28 Business & Professions Code § 17200 involving the Leaded Ceramic Tableware that sets forth

1 standards defining when Proposition 65 warnings will or will not be required ("Alternative
2 Standards"), or if the California Attorney General otherwise provides written endorsement (i.e., a
3 writing that is circulated by the Attorney General that is not intended for the purpose of soliciting
4 further input or comments) of Alternative Standards applicable to products that are of the same
5 general type and function as the Leaded Ceramic Tableware and constructed from the same
6 materials, Cost Plus shall be entitled to seek a modification of this Consent Judgment on forty-
7 five (45) days' notice to Bell so as to be able to utilize and rely on such Alternative Standards in
8 lieu of those set forth in Section 2.2 of this Consent Judgment. Bell shall not unreasonably
9 contest any proposed application to effectuate such a modification provided that the Leaded
10 Ceramic Tableware for which such a modification is sought are of the same general type and
11 function as those to which the Alternative Standards apply.

12 7. Settlement Payment

13 7.1 In settlement of all the claims referred to in this Consent Judgment, and without
14 any admission of liability therefore, Cost Plus shall make the following monetary payments:

15 7.1.1 Cost Plus shall pay a total of \$8,000.00 in civil penalties (the "Civil
16 Penalty") in accordance with this Section. The Civil Penalty will be allocated in accordance with
17 California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the
18 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
19 25% of the funds remitted to Bell. Each respective portion of the Civil Penalty shall be delivered
20 to the addresses listed in Section 2.1.3 below.

21 7.1.2 In addition to the Civil Penalty, Cost Plus shall pay \$52,000.00 to Brodsky
22 & Smith, LLC ("Brodsky Smith") as complete reimbursement for Bell's attorneys' fees and costs,
23 including all investigation and laboratory costs and expert fees, incurred in the course of serving
24 the Notice and bringing the Action, and in enforcing Proposition 65, including without limitation,
25 preparation of the Notice letter and discussions with the California Attorney General. Payment
26 shall be made within seven (7) days of the Effective Date.

27 7.1.3 Within seven (7) days of the Effective Date, Cost Plus shall issue two
28 separate checks for the Civil Penalty amounts to (a) "OEHHA" in the amount of \$6,000.00; and

1 (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$2,000.00. Payment owed to Bell
2 pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esq.
4 Brodsky & Smith, LLC
5 Two Bala Plaza, Suite 510
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

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

23 **8. Notices**

24 8.1 Any and all notices between the parties provided for or permitted under this
25 Consent Judgment, or by law, shall be in writing and personally delivered or sent by: (i) first-
26 class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on
27 any party by the other party to the following addresses:

28 For Cost Plus:

Merrit M. Jones
Bryan Cave LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105

For Bell:

Evan J. Smith, Esq.
Brodsky & Smith, LLC

Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

9. Authority to Stipulate

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

10. Counterparts

10.1 This Consent Judgment may be signed in counterparts and shall be binding upon the parties hereto as if all said parties executed the original hereof.

11. Retention of Jurisdiction

11.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

12. Service on the California Attorney General

12.1 Bell shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General on behalf of the parties so that the Attorney General may review this Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment, and in the absence of any written objection by the Attorney General to the terms of this Consent Judgment, the parties may then submit it to the Court for Approval.

13. Entire Agreement

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitments and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed

1 to exist or to bind any of the parties.

2 14. Governing Law and Construction

3 14.1 The validity, construction and performance of this Consent Judgment shall be
4 governed by the laws of the State of California, without reference to any conflicts of law
5 provisions under California law.

6 15. Court Approval

7 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
8 effect, and cannot be used in any proceeding for any purpose.

9 15.2 The Effective Date of this Consent Judgment shall be the date on which it is
10 entered by the Court.

11 **IT IS SO STIPULATED:**

12
13 Dated: _____

Dated: 1/7/16

14
15 By: _____
16 Ema Bell

By: [Signature]
Cost Plus

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

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20 Dated: _____

Judge of the Superior Court

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14. Governing Law and Construction

14.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions under California law.

15. Court Approval

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

15.2 The Effective Date of this Consent Judgment shall be the date on which it is entered by the Court.

IT IS SO STIPULATED:

Dated: 1/12/16

Dated: _____

By: 
Ema Bell

By: _____
Cost Plus

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: April 15, 2016


Judge of the Superior Court