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ENDORSED  
FILED  
ALAMEDA COUNTY  
OCT 19 2017  
CLERK OF THE SUPERIOR COURT  
By DIANNE HYATT  
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 EMA BELL,

11 Plaintiff,

12 v.

13 SAKAR INTERNATIONAL, INC.,

14 Defendant.

Case No.: RG17865272

**CONSENT JUDGMENT**

Judge: Dennis Hayashi

Dept.: ~~303~~ 518

Hearing Date: October 18, 2017

Hearing Time: 2:30 PM

Reservation #: R-1873808

BY FAX

1           **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Ema Bell  
3 acting on behalf of the public interest (hereinafter “Bell”) and Sakar International, Inc. (“Sakar”  
4 or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of  
5 them as a “Party.” Bell is an individual residing in California that seeks to promote awareness of  
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
7 substances contained in consumer products. Sakar is alleged to be a person in the course of doing  
8 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 Di(2-ethylhexyl) phthalate (DEHP) from headphones without providing clear and  
11 reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical  
12 known to the State of California to cause cancer and reproductive toxicity.

13           **1.3 Notices of Violation/Complaint.** On or about March 7, 2017, Bell served Sakar,  
14 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”  
15 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in  
16 violation of Proposition 65 for failing to warn consumers and customers that head phones  
17 exposed users in California to DEHP. No public enforcer has brought and is diligently  
18 prosecuting the claims alleged in the Notice. On June 23, 2017, Bell filed a complaint (the  
19 “Complaint”) in the matter.

20           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court  
21 has jurisdiction over Defendant as to the allegations contained in the Complaint filed in this  
22 matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to  
23 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding  
24 resolution of all claims which were or could have been raised in the Complaint based on the facts  
25 alleged therein and/or in the Notice.

26           **1.5** Defendant denies the material allegations contained in Bell’s Notice and  
27 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent  
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1 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or  
2 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as  
3 an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such  
4 being specifically denied by Defendant. However, this section shall not diminish or otherwise  
5 affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7 2.1 **Covered Products.** The term "Covered Products" means headphones that are  
8 manufactured, distributed and/or offered for sale in California by Sakar and that contain DEHP.

9 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment  
10 is entered as a Judgment of the Court.

11 **3. INJUNCTIVE RELIEF: WARNINGS**

12 3.1 As of the date this Consent Judgment is signed by both Parties, Sakar shall not  
13 manufacture or order from any supplier any Covered Products intended for retail sale in  
14 California that contains DEHP on any component to which consumers are exposed in excess of  
15 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Covered Product is  
16 accompanied by a warning that complies with Article 6 of Title 27 of the California Code of  
17 Regulations. Sakar shall have a period of one year from the date this Consent Judgment is signed  
18 by both Parties to sell through its inventory of Covered Products that were ordered prior to the  
19 date this Consent Judgment is signed. Until August 30, 2018, the warning shall consist of either:

20 (a) The statement: "WARNING: This product contains a chemical known to the State  
21 of California to cause cancer, birth defects and other reproductive harm;" or

22 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral  
23 triangle with a bold black outline to the left of the word "warning" in bold all capital  
24 letters, followed by the statement "This product can expose you to chemicals including  
25 Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause  
26 cancer and birth defects or other reproductive harm. For more information, go to  
27 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov);" or (2) a warning on the headphones consisting of a symbol  
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1 that is a black exclamation point in a yellow equilateral triangle with a bold black outline  
2 to the left of the word "warning" in bold all capital letters, followed by the statement  
3 "Cancer and Reproductive Harm - www.P65Warnings.ca.gov."<sup>1</sup>  
4

5 On and after August 30, 2018, the warning set forth in Section 3.1(b) shall be used.

6 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the  
7 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
8 automatic process, providing that the warning is displayed with such conspicuousness, as  
9 compared with other words, statements, or designs as to render it likely to be read and understood  
10 by an ordinary individual under customary conditions of purchase or use. A warning may be  
11 contained in the same section of the packaging, labeling, or instruction booklet that states other  
12 safety warnings, if any, concerning the use of the product and shall be at least the same size as  
13 those other safety warnings.

#### 14 4. MONETARY TERMS

15 4.1 **Civil Penalty.** Sakar shall pay a Civil Penalty of \$3,000.00 pursuant to Health and  
16 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
17 Code § 25192, with 75% of these funds remitted to the State of California's Office of  
18 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Bell,  
19 as provided by California Health & Safety Code § 25249.12(d).

20 4.1.1 Within fourteen (14) business days of the Effective Date, Sakar shall issue  
21 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00;  
22 and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$750.00. Payment owed to  
23 Bell pursuant to this Section shall be delivered to the following payment address:

24 Evan J. Smith, Esquire  
25 Brodsky & Smith, LLC  
26 Two Bala Plaza, Suite 510  
27 Bala Cynwyd, PA 19004

28 <sup>1</sup> The triangular symbol need only be in yellow where the sign, label, shelf tag or other  
transmission format is being printed in color for purposes of other language, symbols or designs.

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

4 For United States Postal Service Delivery:

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

10 For Non-United States Postal Service Delivery:

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

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

18 4.2 **Attorney Fees.** Sakar shall pay \$28,000.00 to Brodsky & Smith, LLC ("Brodsky  
19 Smith") as complete reimbursement for Plaintiff Bell's attorneys' fees and costs incurred as a result  
20 of investigating, bringing this matter to Sakar's attention, litigating and negotiating and obtaining  
21 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section  
22 1021.5.

23 4.3 Sakar shall pay the Civil Penalty and attorney fees identified in Sections 4.1 and 4.2  
24 within fourteen (14) days of the Effective Date.

25 **5. RELEASE OF ALL CLAIMS**

26 5.1 This consent judgment is a full, final, and binding resolution between Bell acting on  
27 her own behalf, and on behalf of the public interest, and Sakar, and its parents, shareholders,  
28 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,  
subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,  
successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to  
whom they directly or indirectly distribute or sell Covered Products, including but not limited to  
manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,

1 franchisees, and cooperative members, including but not limited to Burlington Coat Factory  
2 Warehouse Corp. ("Downstream Releasees"), of all claims for violations of Proposition 65 based  
3 on exposure to DEHP from Covered Products as set forth in the Notice, with respect to any  
4 Covered Products manufactured, distributed, or sold by Sakar prior to the Effective Date. This  
5 consent judgment shall have preclusive effect such that no other person or entity, whether  
6 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue  
7 and/or take any action with respect to any violation of Proposition 65 that was alleged in the  
8 Complaint, or that could have been brought pursuant to the Notice against Sakar or its  
9 Downstream Releasees of the Product including but not limited to ("Proposition 65 Claims").  
10 Compliance with the terms of this consent judgment constitutes compliance with Proposition 65  
11 with regard to the Covered Products.

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

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26           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
27           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
28           AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
              HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
              THE DEBTOR.

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2           5.3    Sakar waives any and all claims against Bell, her attorneys and other  
3 representatives, for any and all actions taken or statements made (or those that could have been  
4 taken or made) by Bell and her attorneys and other representatives, whether in the course of  
5 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
6 and/or with respect to Covered Products.

7    **6.    INTEGRATION**

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

12   **7.    GOVERNING LAW**

13           7.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California and apply within the State of California. In the event that Proposition 65 is repealed or  
15 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
16 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,  
17 and to the extent that, Covered Products are so affected.

18   **8.    NOTICES**

19           8.1    Unless specified herein, all correspondence and notices required to be provided  
20 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)  
21 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any  
22 party by the other party at the following addresses:

23   For Defendant:

24           Matthew I. Kaplan  
25           TUCKER ELLIS LLP  
26           515 South Flower Street  
27           Forty-Second Floor  
28           Los Angeles, CA 90071

27   And

28   For Bell:

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Evan Smith  
Brodsky & Smith, LLC  
9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

**11. MODIFICATION**

11.1 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.



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**12. ATTORNEY'S FEES**

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

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

**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: \_\_\_\_\_

Date: July 18, 2017

By: \_\_\_\_\_  
EMA BELL

By: [Signature]  
SAKAR INTERNATIONAL, INC.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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**AGREED TO:**

**AGREED TO:**

Date: 5/10/17

Date: \_\_\_\_\_

By:   
EMMA BELL

By: \_\_\_\_\_  
SAKAR INTERNATIONAL, INC.

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

Dated: 10/19/17

  
Judge of Superior Court