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BRODSKY & SMITH, LLC
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Beverly Hills, CA 90212
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Attorneys for Plaintiff
Erna Bell

FILED
ALAMEDA COUNTY

MAY 02 2018

CLERK OF THE SUPERIOR COURT
By *Danielle Salinas*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

v.

BELLA VITA BAGS, LLC,

Defendant.

Case No.: RG18890592
CONSENT JUDGMENT

Judge: Julia Spain

Dept.: 520

Hearing Date: May 2, 2018

Hearing Time: 2:00 PM

Reservation #: R-1939912

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Erna Bell acting on behalf of the public interest (hereinafter "Bell") and Bella Vita Bags, LLC, (hereinafter "Bella Vita Bags"), with Bell and Bella Vita Bags collectively referred to as the "Parties" and each of them as a "Party." Bell is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Bell alleges that Bella Vita Bags is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq. (hereinafter "Proposition 65").

1.2 **Allegations and Representations.** Bell alleges that Bella Vita Bags has exposed individuals to Di(2-ethylhexyl)phthalate ("DEHP") from Chill It Wine bags without providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity and cancer.

1.3 **Notices of Violation/Complaint.** On or about September 14, 2017, Bell served Bella Vita Bags and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code § 25249.7(d) (the "Notice"), alleging that Bella Vita Bags was in violation of Proposition 65 for failing to warn consumers and customers that the cosmetic bags exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On January 25, 2018, Bell filed a complaint in the matter as captioned above ("Complaint").

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

1 1.5 Bella Vita Bags denies the material allegations contained in Bell's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Bella Vita Bags (or any other person or entity) of
4 any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
5 Judgment constitute or be construed as an admission by Bella Vita Bags (or any other person or
6 entity) of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
7 denied by Bella Vita Bags. However, this section shall not diminish or otherwise affect the
8 obligations, responsibilities, and duties of Bella Vita Bags under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Chill It Wine bags that
11 have been distributed, sold and/or offered for sale in California by Bella Vita Bags, and that
12 contain DEHP.

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment
14 is entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF WARNINGS**

16 3.1 Commencing on the Effective Date, Bella Vita Bags shall not distribute or sell any
17 Covered Products directly to California consumers or to any downstream retailer, distributor, or
18 wholesaler unless the Covered Product, is accompanied by either of the following warning(s):

19 "WARNING: This product contains a chemical known to the State of California to cause
20 cancer, birth defects and other reproductive harm."

21 Or

22 "WARNING: This product can expose you to chemicals including Di(2-ethylhexyl)
23 phthalate (DEHP), which is known to the State of California to cause cancer and birth
24 defects or other reproductive harm. For more information go to
25 www.P65Warnings.ca.gov."

26 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
27 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
28

1 on the packaging, labeling, or instruction booklet and displayed with such conspicuousness, as
2 compared with other words, statements, or designs as to render it likely to be read and understood
3 by an ordinary individual under customary conditions of purchase or use. A warning may be
4 contained in the same section of the packaging, labeling, or instruction booklet that states other
5 safety warnings, if any, concerning the use of the product and shall be at least the same size as
6 those other safety warnings.

7 **4. MONETARY TERMS**

8 **4.1 Civil Penalty.** Bella Vita Bags, on its own behalf and for the benefit of all
9 Downstream Defendant Releasees defined in section 5.1 below, shall pay a Civil Penalty of
10 \$2,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in
11 accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to
12 the State of California's Office of Environmental Health Hazard Assessment and the remaining
13 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety Code
14 § 25249.12(d).

15 **4.1.1** Within ten (10) business days of the Effective Date, Bella Vita Bags shall
16 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
17 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. Payment
18 owed to Bell pursuant to this Section shall be delivered to the following payment address:

19
20 Evan J. Smith, Esquire
21 Brodsky & Smith, LLC
22 Two Bala Plaza, Suite 510
23 Bala Cynwyd, PA 19004

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

26 For United States Postal Service Delivery:

27 Mike Gyurics
28 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:

1
2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

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

9 4.2 **Attorney Fees.** Bella Vita Bags, on its own behalf and for the benefit of all
10 Downstream Defendant Releasees, shall pay \$20,000.00 to Brodsky & Smith, LLC ("Brodsky
11 Smith") as complete reimbursement for Plaintiff Bell's attorneys' fees and costs incurred as a
12 result of investigating, bringing this matter to Bella Vita Bags' attention, litigating and
13 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
14 of Civil Procedure section 1021.5. Payment shall be made within ten (10) business days of the
15 Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Bell,
18 individually and in her representative capacity for the benefit of the public interest, and Bella Vita
19 Bags and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
20 companies, and affiliates, and their successors and assigns (collectively "Defendant Releasees");
21 and for the benefit of all entities from whom they obtain and to whom they directly or indirectly
22 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
23 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
24 members, including but not limited to Retail Services & Systems, Inc. /a Total Wine & More,
25 and its subsidiaries and affiliates (collectively "Downstream Defendant Releasees"), with respect
26 to all claims for alleged violations of Proposition 65 based on exposure to DEHP from Covered
27 Products as set forth in the Notice, with respect to any Covered Products manufactured,
28 distributed, or sold by Bella Vita Bags prior to the Effective Date. Compliance with the terms of
this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
Products.

1 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
2 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
4 action and releases any Bella Vita Bags, Defendant Releasees, and Downstream Defendant
5 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
6 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
7 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity,
8 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
9 related to or arising from Covered Products manufactured distributed or sold by Bella Vita Bags
10 or Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph,
11 Bell hereby specifically waives any and all rights and benefits which she now has, or in the future
12 may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
13 which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
15 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
16 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
17 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
18 THE DEBTOR.

19 5.3 Bella Vita Bags waives any and all claims against Bell, her attorneys and other
20 representatives, for any and all actions taken or statements made (or those that could have been
21 taken or made) by Bell and her attorneys and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and/or with respect to Covered Products.

24 6. INTEGRATION

25 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
26 any and all prior negotiations and understandings related hereto shall be deemed to have been
27 merged within it. No representations or terms of agreement other than those contained herein
28 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

1 7. **GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Bella Vita Bags shall have no further obligations pursuant to this Consent Judgment with respect
6 to, and to the extent that, Covered Products are so affected.

7 8. **NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
10 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
11 party by the other party at the following addresses:

12 For Bella Vita Bags:

13 Bella Vita Bags, LLC
14 c/o Marisa China
15 1000 South Park Lane, #1
16 Tempe, AZ 85281

17 For Bell:

18 Evan Smith
19 Brodsky & Smith, LLC
20 2 Bala Plaza, Suite 510
21 Bala Cynwyd, PA 19004

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

24 9. **COUNTERPARTS; FACSIMILE SIGNATURES**

25 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
26 which shall be deemed an original, and all of which, when taken together, shall constitute one and
27 the same document.
28

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

2 **APPROVAL**

3 10.1 Bell agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
5 and Bella Vita Bags agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by
7 the Court and shall be null and void if, for any reason, it is not approved by the Court. In such
8 case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached
9 within 30 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
12 Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall
13 proceed on its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either
17 Party.

18 **12. ATTORNEY'S FEES**

19 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
20 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
21 unless the unsuccessful party has acted with substantial justification. For purposes of this
22 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
23 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

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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 certifies 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: 2/18/18
By: [Signature]
IMABELLA

Date: _____
By: _____
BELLA VITA BAGS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: _____

Date: 2/1/18

By: _____
EMA BELI.

By: 
BELIA VITA BAGS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 5/2/18


Judge of Superior Court