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FILED
ALAMEDA COUNTY

MAY 03 2019

CLERK OF THE SUPERIOR COURT
By *Kelle Clarke*
Deputy

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

11 **EMA BELL,**

12 Plaintiff,

13 v.

14 **ORIENTAL TRADING COMPANY, INC.**

15 Defendant.

Case No.: RG18932187

CONSENT JUDGMENT

Judge: Stephen Pulido

Dept.: 517

Hearing Date: April 30, 2019

Hearing Time: 3:00 PM

Reservation #: R-2043738

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 Oriental Trading Company, Inc.
4 (“Oriental Trading” or “Defendant”) with Bell and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Bell is an individual residing in California that seeks to
6 promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Oriental Trading is alleged to
8 be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety
9 Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Bell alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (“DEHP”) from its sales of Covered Products (defined
12 below) without providing a clear and reasonable exposure warning pursuant to Proposition 65.
13 DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer,
14 birth defects or other reproductive harm.

15 **1.3 Notice of Violation/Complaint.** On or about August 1, 2018, Bell served Oriental
16 Trading, and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of Covered Products
19 expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting
20 the claims alleged in the Notice. On December 13, 2018, Bell filed a complaint (the “Complaint”)
21 in the matter.

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve and enter
25 this Consent Judgment as a full and final binding resolution of all claims which were or could have
26 been raised in the Complaint based on the facts alleged therein and/or in the Notice.
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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 badge holders that are
10 manufactured, distributed, imported, sold, and/or offered for sale in California and which contain
11 greater than or equal to 0.1% (1,000) parts per million (ppm) of DEHP when analyzed pursuant to
12 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
13 methodology utilized by federal or state government agencies for the purpose of determining the
14 phthalate content in a solid substance.

15 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
16 entered as a Judgment of the Court.

17 **3. INJUNCTIVE RELIEF: WARNINGS**

18 3.1 **Covered Products Compliance.** As of the Effective Date and continuing
19 thereafter, Covered Products shall be accompanied by a clear and reasonable warning as described
20 in Section 3.2, below. The warning requirement set forth in Section 3.2 shall apply only to Covered
21 Products that Oriental Trading directly manufactures, imports, distributes, sells, or offers for sale
22 in California. The warning requirement shall not apply to Covered Products that are already in the
23 stream of commerce as of the Effective Date or that Oriental Trading places into the stream of
24 commerce within ninety (90) days of the Effective Date.

25 3.2 **Clear and Reasonable Warning.** Where required, Oriental Trading shall provide
26 Proposition 65 warnings for the Covered Products as follows:
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1 (a) Oriental Trading may use any of the following warning statements in full
2 compliance with this Section:

3 (i) **⚠ WARNING:** This product can expose you to chemicals including
4 di(2-ethylhexyl) phthalate, which is known to the State of California to cause cancer and birth
5 defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

6 (ii) **⚠ WARNING:** Cancer and Reproductive Harm -
7 www.P65Warnings.ca.gov.

8 (b) A warning provided pursuant to subsection (a) must print the word
9 "WARNING:" in all capital letters and in bold font, followed by a colon. The warning symbol to
10 the left of the word "WARNING:" must be a black exclamation point in a yellow equilateral
11 triangle with a black outline, except that if the sign or label for the Covered Product does not use
12 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
13 than the height of the word "WARNING:".

14 (c) The Parties recognize that the warnings described in subsection (a) above
15 are Safe Harbor warnings under Proposition 65 and its implementing regulations, and that they are
16 not the exclusive warnings that Oriental Trading can provide in order to satisfy the statutory clear
17 and reasonable warning requirement or the requirements of Section 3.2, above.

18 (d) If Proposition 65 warnings for DEHP should no longer be required, Oriental
19 Trading shall have no obligation to provide a warning pursuant to this Consent Judgment.

20 (e) In the event that the Office of Environmental Health Hazard Assessment
21 promulgates one or more regulations requiring or permitting warnings different than those set forth
22 above, Oriental Trading shall be entitled to use, at its discretion, such other warnings without being
23 deemed in breach of this Consent Judgment.

24 4. MONETARY TERMS

25 4.1 **Civil Penalty.** Oriental Trading shall pay \$3,000.00 as a Civil Penalty pursuant to
26 Health and Safety Code section 25249.7(b). The Civil Penalty shall be apportioned in accordance
27 with California Health & Safety Code § 25192, with 75% (\$2,250) of these funds remitted to
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1 OEHHA and the remaining 25% (\$750) of the Civil Penalty remitted to Bell, as provided by
2 California Health & Safety Code § 25249.12(d).

3 4.1.1 Within ten (10) days of the Effective Date, Oriental Trading shall issue two
4 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and
5 to (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$750.00. Payment owed to
6 Bell pursuant to this Section shall be delivered to the following payment address:

7 Evan J. Smith, Esquire
8 Brodsky & Smith, LLC
9 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
P.O. Box 4010
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
1001 I Street
Sacramento, CA 95814.

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

22 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Oriental
23 Trading shall pay \$24,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete
24 reimbursement for Bell's attorneys' fees and costs incurred as a result of investigating, bringing
25 this matter to Oriental Trading' attention, litigating and negotiating and obtaining judicial approval
26 of this Consent Judgment in the public interest, pursuant to Code of Civil Procedure § 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 Bell, acting on her own behalf and on behalf of the public interest, releases Oriental
3 Trading, and its parents, shareholders, members, directors, officers, managers, employees,
4 representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies,
5 and affiliates, and their predecessors, successors and assigns, and all entities from whom they obtain
6 and to whom they directly or indirectly distribute or sell Covered Products, including but not limited
7 to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
8 franchisees, and cooperative members ("collectively, Releasees"), of all claims for violations of
9 Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice and/or
10 Complaint, with respect to any Covered Products manufactured, distributed, imported, sold, and/or
11 offered for sale by Oriental Trading prior to or within ninety (90) days of the Effective Date. This
12 Consent Judgment shall have preclusive effect such that no other person or entity, whether
13 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or
14 take any action with respect to any violation of Proposition 65 that was alleged in the Complaint,
15 or that could have been brought pursuant to the Notice and/or Complaint against Oriental Trading
16 or its Releasees of the Covered Products. Compliance with the terms of this Consent Judgment
17 constitutes compliance with Proposition 65 with regard to the Covered Products.

18 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
19 representatives, attorneys, and successors and/or assignees, hereby waives all rights to institute or
20 participate in, directly or indirectly, any form of legal action and releases Oriental Trading and
21 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
22 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
23 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed
24 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
25 to or arising from products manufactured, distributed, imported, sold, and/or offered for sale by
26 Oriental Trading or Releasees. With respect to the foregoing waivers and releases in this paragraph,
27 Bell hereby specifically waives any and all rights and benefits which she now has, or in the future
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1 may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
2 provides as follows:

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

7 5.3 Oriental Trading 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,
and/or with respect to Covered Products.

11 **6. INTEGRATION**

12 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
13 any and all prior negotiations and understandings related hereto shall be deemed to have been
14 merged within it. No representations or terms of agreement other than those contained herein exist
15 or have been made by any Party with respect to the other Party or the subject matter hereof.

16 **7. GOVERNING LAW**

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

22 **8. NOTICES**

23 8.1 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:

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1 Sarah Quiter
2 Hunton Andrews Kurth LLP
3 50 California Street
4 Suite 1700
5 San Francisco, CA 94111

6 And

7 Malcolm Weiss, Esq.
8 Hunton Andrews Kurth LLP
9 550 South Hope Street, Suite 2000
10 Los Angeles, CA 90071
11 mweiss@HuntonAK.com

12 For Bell:

13 Evan Smith
14 Brodsky & Smith, LLC
15 9595 Wilshire Blvd., Ste. 900
16 Beverly Hills, CA 90212

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and
22 the same document.

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

25 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
26 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
27 Defendant agrees it shall support approval of such Motion.

28 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 within one (1)
year after execution by both Parties. In such case, the Parties agree to meet and confer on how to
proceed and if such agreement is not reached within thirty (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

1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
2 its normal course on the trial court's calendar, and all fees and penalties paid by Oriental Trading
3 herein shall be refunded.

4 **11. MODIFICATION**

5 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
6 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

7 **12. ATTORNEY'S FEES**

8 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
9 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

10 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
11 pursuant to law.

12 **13. RETENTION OF JURISDICTION**

13 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
14 Consent Judgment.

15 **14. AUTHORIZATION**

16 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective Parties and have read, understood and agree to all of the terms and conditions of this
18 document and certify that he or she is fully authorized by the Party he or she represents to execute
19 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
20 explicitly provided herein each Party is to bear its own fees and costs.

21
22 **AGREED TO:**

23
24 Date: 1/28/19

25 By: [Signature]
26 **EMK BELI**

AGREED TO:

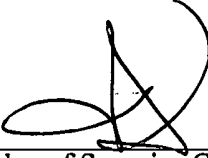
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24 Date: 1/18/19

25 By: [Signature]
26 **ORIENTAL TRADING COMPANY, INC**

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

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Dated: 5-3-2019



Judge of Superior Court
Stephen Pulido