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Attorneys for Plaintiff

FILED
Superior Court of California
County of Alameda

06/08/2023

Ciad Fluke, Executive Officer / Clerk of the Court

By: *[Signature]* Deputy
B. Mercado

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

v.

ADESSO, INC.,

Defendant.

Case No.: HG20070351

CONSENT JUDGMENT

Judge: Jeffrey Brand
Dept.: 22
Hearing Date: April 27, 2023
Hearing Time: 2:00 PM
Reservation #: 391635609313

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 (“Bell”) and Adesso, Inc. (“Adesso” or “Defendant”) with Bell and
4 Defendant collectively referred to as the “Parties” and each of them as a “Party.” Bell is an
5 individual residing in California who seeks to promote awareness of exposures to toxic chemicals
6 and improve human health by reducing or eliminating hazardous substances contained in consumer
7 products. Adesso is alleged to be a person in the course of doing business for purposes of
8 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 its sales of the Adesso Xstream
11 headsets/headphones without providing a clear and reasonable exposure warning pursuant to
12 Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California
13 to cause cancer and reproductive toxicity.

14 1.3 **Notice of Violation/Complaint.** On or about April 10, 2019, Bell served Adesso,
15 Ross Stores, Inc. (“Ross”), and various public enforcement agencies with documents entitled “60-
16 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging
17 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
18 Adesso Xstream headsets/headphones exposes users in California to DEHP. No public enforcer has
19 brought and is diligently prosecuting the claims alleged in the Notice. On August 11, 2020, Bell
20 filed a complaint (the “Complaint”) in the matter.

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

1 1.5 **No Admission.** Defendant denies the material allegations contained in Bell’s Notice
2 and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or
4 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
5 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
6 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
7 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 2. **DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Adesso Xstream
10 headsets/headphones that are manufactured, distributed and/or offered for sale in California by
11 Adesso.

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 Covered Products.** As of the date this Consent Judgment is
16 signed by both Parties, and continuing thereafter, Covered Products that Adesso directly
17 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
18 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
20 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
22 Product.

23 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose
27 of determining the phthalate content in a solid substance.

1 **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
3 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
4 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
7 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

8 (a) **Warning.** The “Warning” shall consist of the statement:

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

12 (b) **Alternative Warning:** Adesso may, but is not required to, use the alternative short-
13 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

14 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

15 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
21 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
26 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
27 the use of the Covered Product and shall be at least the same size as those other safety warnings.

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

14 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
15 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
16 Judgment or by complying with warning requirements adopted by the State of California’s Office
17 of Environmental Health Hazard Assessment (“OEHHA”) applicable to the Covered Product and
18 the exposure at issue after the Effective Date.

19 **4. MONETARY TERMS**

20 **4.1 Civil Penalty.** Adesso shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
21 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
22 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining
23 25% of the Civil Penalty remitted to Bell, as provided by California Health & Safety Code
24 § 25249.12(d).

25 **4.1.1** Within ten (10) days of the Effective Date, Adesso shall issue two separate
26 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b) “Ema
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1 Bell” in the amount of \$250.00 Payment owed to Bell pursuant to this Section shall be delivered
2 to the following payment address:

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

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

8 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

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

18 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Adesso shall pay
19 \$16,500.00 to Brodsky & Smith (“Brodsky & Smith”) as complete reimbursement for Bell’s
20 attorneys’ fees and costs incurred as a result of investigating, bringing this matter to Adesso
21 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
22 interest, pursuant to Code of Civil Procedure § 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
25 on her own behalf, and on behalf of the public interest, and Adesso, and its parents, shareholders,
26 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
27 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
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1 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to
2 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
3 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
4 franchisees, and cooperative members (“Chain of Distribution Releasees”), of all claims for
5 violations of Proposition 65 based on exposure to DEHP from use of the Covered Products as set
6 forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by
7 Adesso prior to the Effective Date. It is the Parties’ intention that this Consent Judgment shall have
8 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
9 her, or its interests or the public interest, shall be permitted to pursue and/or take any action with
10 respect to any violation of Proposition 65 based on exposure to DEHP that was alleged in the
11 Complaint, or that could have been brought pursuant to the Notice against Adesso and/or the Chain
12 of Distribution Releasees of the Covered Products (“Proposition 65 Claims”).

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

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
27 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
28 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

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

8 **6. INTEGRATION**

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

13 **7. GOVERNING LAW**

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

19 **8. NOTICES**

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

24 For Defendant:

25 K.T. Tran
26 Law Offices of K.T. Tran
965 N. Vignes Street, Suite 10
Los Angeles, CA 90012

For Bell:

27 Evan Smith
28 Brodsky & Smith
Two Bala Plaza, Ste. 805
Brodsky Smith, 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.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
8 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if an agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further written stipulation of the
20 Parties and the approval of the Court or upon the granting of a motion brought to the Court by either
21 Party.

22 **12. ATTORNEY'S FEES**

23 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
24 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

25 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
26 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 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 in this Consent Judgment each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 3 / 7 / 23
By: [Signature]
EMA BELL

Date: 2/23/2023
By: [Signature]
ADESSO, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 06/08/2023

[Signature]
Judge of Superior Court

Jeffrey Brand / Judge