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5 *Attorneys for Plaintiff*

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9

10 EMA BELL,

11 Plaintiff,

12 vs.

13 KRACO ENTERPRISES, LLC,  
14 O'REILLY AUTOMOTIVE STORES,  
15 INC., AUTO EXPRESSIONS, LLC,

16 Defendants.

Case No. RG15798086

**[PROPOSED] CONSENT JUDGMENT**

Judge: Stephen Pulido

Dept.: 16

Hearing Date: December 8, 2016

Hearing Time: 3:00 PM

Reservation #: R-1790565

1           **1. Introduction**

2           1.1     On January 22, 2015, Ema Bell (“Bell”) served Kraco Enterprises, LLC (“Kraco”),  
3 O’Reilly Automotive Stores, Inc. (“O’Reilly”), Auto Expressions, LLC (“Auto Expressions”) and  
4 various public enforcement agencies with a document entitled “Notice of Violation of California  
5 Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice was subsequently amended  
6 on August 13, 2015 in order to provide Kraco and such others, including public enforcers, with  
7 notice that alleged that Kraco was in violation of California Health & Safety Code § 25249.6  
8 (“Proposition 65”), for failing to warn consumers and customers that Kraco Sport Performance  
9 Seat Covers, including but not limited to UPC No. 0 19912 54924 8, Part No. 5075531-Red  
10 (“Product” or “Products”) exposed users in California to the chemical Di(2-ethylhexyl) phthalate  
11 (DEHP). No public enforcer has diligently prosecuted the allegations set forth in the Notice.

12           1.2     On December 28, 2015, Bell filed a Complaint for Civil Penalties and Injunctive  
13 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG15798086, against Kraco,  
14 O’Reilly and Auto Expressions alleging violations of Proposition 65.

15           1.3     Kraco, O’Reilly and Auto Expressions are each corporations that employ more  
16 than ten persons under California Health and Safety Code §25249.6 and offered the Products for  
17 sale within the State of California. Kraco, O’Reilly and Auto Expressions are collectively  
18 referred to herein as, “Defendants.”

19           1.4     Bell’s Complaint alleges, among other things, that Defendants sold the Products in  
20 California and/or to California citizens, that the Products contains DEHP, and that the resulting  
21 exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons  
22 to a chemical known to the State of California to cause both cancer and reproductive toxicity  
23 without first providing a clear and reasonable warning to such individuals.

24           1.5     For purposes of this Consent Judgment only, the parties stipulate that this Court  
25 has jurisdiction over the allegations of violations contained in the Complaint and personal  
26 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the  
27 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a  
28 resolution of the allegations contained in the Complaint.

1           1.6     The parties enter into this Consent Judgment pursuant to a full settlement of  
2     disputed claims between the parties as alleged in the Complaint for the purpose of avoiding  
3     prolonged litigation. By execution of this Consent Judgment, Defendants do not admit any  
4     violation of Proposition 65 and specifically denies that they have committed any such violation.  
5     Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact,  
6     issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
7     construed as an admission by Defendants of any fact, issue of law, or violation of law. Nothing in  
8     this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that  
9     Defendants may have in any other future legal proceeding. However, this paragraph shall not  
10    diminish or otherwise affect the obligations, responsibilities and duties of Defendants under this  
11    Consent Judgment.

12           1.7     For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
13    date that the Consent Judgment is entered by the Court.

14           **2.     Injunctive Relief**

15           2.1     Commencing ninety (90) days after the Effective Date, and continuing thereafter,  
16    Defendants shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to  
17    Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3.  
18    Defendants and their downstream retailers shall have no obligation to label Products that entered  
19    the stream of commerce prior to the Effective Date or within ninety (90) days after the Effective  
20    Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in  
21    compliance with the standard set forth below in section 2.2.

22           2.2     "Reformulated Product" shall mean Product that contains less than or equal to  
23    1,000 parts per million ("ppm") of DEHP when analyzed pursuant to CPSC-CH-C1001-09.3  
24    Standard Operating Procedure for Determination of Phthalates method.

25           2.3     Commencing on the Effective Date, Defendants shall, for all Products they sell or  
26    distribute and that are intended for sale in California and that is not a Reformulated Product,  
27    provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) below. The  
28    warning shall be prominently placed with such conspicuousness as compared with other words,

1 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
2 individual under customary conditions before purchase or use. Each warning shall be provided in  
3 a manner such that the consumer or user understands to which specific Product the warning  
4 applies, so as to minimize the risk of consumer confusion.

5 **(a) Retail Store Sales**

6 **(i) Product Labeling.** Defendants shall affix a warning to the  
7 packaging, labeling or directly on each Product sold in retail outlets in California  
8 by Defendants or any person selling the Product that states:

9 **[PROPOSITION 65] WARNING:**

10 This product contains a chemical known to the State of California to cause cancer,  
11 birth defects or other reproductive harm.

12 The bracketed text may, but is not required to, be used.

13 **(ii) Point of Sale Warnings.** Alternatively to the Product Labeling  
14 set forth in Section 2.3(a)(i) above, Defendants may provide warning signs in the  
15 form below to its customers in California with instructions to post the warning  
16 signs in close proximity to the point of display of the Product. Such instruction  
17 sent to Defendants customers shall be sent by certified mail, return receipt  
18 requested.

19 **[PROPOSITION 65] WARNING:**

20 This product contains a chemical known to the State of California to cause cancer,  
21 birth defects or other reproductive harm.

22 The bracketed text may, but is not required to, be used.

23 **(b) Mail Order Catalog Warning.** In the event that Defendants directly  
24 sell Product via mail order catalog directly to consumers located in California after the Effective  
25 Date that is not a Reformulated Product, Defendants shall provide a warning for such Product  
26 sold via mail order catalog to such California residents. A warning that is given in a mail order  
27 catalog shall be in the same type size or larger than the Product description text within the  
28 catalog. The following warning shall be provided on the same page and in the same location as  
the display and/or description of the Product:

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**[PROPOSITION 65] WARNING:**

This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used. Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Defendants may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product:

**[PROPOSITION 65] WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used. The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Defendants must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

**(c) Internet Sales Warning.** In the event that Defendants sell Product via the internet directly to consumers located in California after the Effective Date that is not a Reformulated Product, Defendants shall provide a warning for such Product sold via the internet to such California residents. A warning that is given on the internet shall be in the same type size or larger than the Product description text and shall be given in conjunction with the direct sale of the Product. The warning shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for the Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning shall be provided:

**[PROPOSITION 65] WARNING:**

This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to, be used.

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**3. Entry of Consent Judgment**

3.1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of this Consent Judgment, Bell and Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint and 60-Day Notice.

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

**4. Matters Covered By This Consent Judgment**

4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent Judgment is a final and binding resolution between Bell, acting on her own behalf, and on behalf of the public and in the public interest, and Defendants, and shall have preclusive effect such that no other person or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against Defendants or their downstream retailers of the Product including but not limited to Auto Expressions ("Proposition 65 Claims"). As to alleged exposures to DEHP in the Product, compliance with the terms of this Consent Judgment by Defendants is deemed sufficient to satisfy all obligations concerning compliance by Defendants and their downstream retailers, including but not limited to Auto Expressions with the requirements of Proposition 65 with respect to the Products.

4.2 **Plaintiff's Release of Additional Claims.** As to Bell for and in her individual capacity only, this Consent Judgment shall have preclusive effect such that he shall not be permitted to pursue and/or take any action with respect to any other statutory or common law claim, to the fullest extent that any such claim was or could have been asserted by him against Defendants or any and all downstream retailers of the Products based on their exposure of Bell to DEHP in the Products, or their failure to provide a clear and reasonable warning of exposure to Bell as well as any other claim based in whole or in part on the facts alleged in the Complaint and the Notice, whether based on actions committed by Defendants or their downstream retailers

1 of the Products ("DEHP Exposure Claims").

2           **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.**     As to  
3 Bell's public release of Proposition 65 Claims set forth in Section 4.1 ("Public Release") and her  
4 individual release of DEHP Exposure Claims set forth in Section 4.2 ("Individual Release"), Bell,  
5 acting on her own behalf and on behalf of the public with respect to the Public Release and acting  
6 in her individual capacity with respect to the Individual Release, waives all rights to institute any  
7 form of legal action, and releases all claims against Defendants and their downstream retailers  
8 (including their parents, subsidiaries, affiliates, assigns, and acquiring entities of any of them,  
9 who may use, maintain, distribute or sell the Products) for the Proposition 65 Claims and the  
10 DEHP Exposure Claims (referred to collectively in this Section as "Claims"). In furtherance of  
11 the foregoing, Bell, acting on her own behalf and on behalf of the public with respect to the  
12 Public Release and acting in her individual capacity with respect to the Individual Release,  
13 waives any and all rights and benefits which she now has, or in the future may have, conferred  
14 upon him with respect to the Claims by virtue of the provisions of § 1542 of the California Civil  
15 Code, which provides as follows:

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

21           **4.4 Defendants' Release of Plaintiff Bell.**     Defendants, each on behalf of itself,  
22 its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives  
23 any and all claims against Bell, her attorneys, and other representatives for any and all actions  
24 taken or statements made (or those that could have been taken or made) by Bell and her attorneys  
25 and other representatives, whether in the course of investigating claims or otherwise seeking  
26 enforcement of Proposition 65 against Defendants in this matter.

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**5. Enforcement of Judgment**

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

**6. Modification of Judgment**

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

6.2 Should any court enter final judgment in a case brought by Bell or the People involving the Products that sets forth standards defining when Proposition 65 warnings will or will not be required ("Alternative Standards"), or if the California Attorney General's office otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not intended for the purpose of soliciting further input or comments) of Alternative Standards applicable to products that are of the same general type and function as the Products and constructed from the same materials, Defendants shall be entitled to seek a modification of this Consent Judgment on sixty (60) days' notice to Bell so as to be able to utilize and rely on such Alternative Standards in lieu of those set forth in Section 2 of this Consent Judgment. Bell shall not unreasonably contest any proposed application to effectuate such a modification provided that the Products for which such a modification is sought are of the same general type and function as those to which the Alternative Standards apply.



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7. Settlement Payment

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

7.1.1 **Civil Penalty.** Within seven (7) business days of the Effective Date, Kraco shall pay a total of \$3,000.00 in civil penalties in accordance with this Section. The Initial Civil Penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil penalty remitted to Bell. Within seven (7) business days of the Effective Date, Kraco shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of 2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of 750.00. Payment owed to Bell pursuant to this Section shall be delivered to the following payment address:

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

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

For United States Postal Service Delivery:

Mike Gyurics  
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:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

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

1                   7.1.2 **Attorney Fees and Costs.** In addition to the payment above, Kraco shall  
2 pay \$32,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement for  
3 Bell's attorneys' fees and costs, including any investigation and laboratory costs or expert fees,  
4 incurred in the course of bringing the Complaint and in enforcing Proposition 65, including  
5 without limitation, preparation of the 60-Day Notice letter and discussions with the office of the  
6 Attorney General. Payment shall be made within seven (7) business days of the Effective Date  
7 and sent to the address for Brodsky & Smith set forth in Section 7.1.1, above.

8                   **8.     Notices**

9                   8.1 Any and all notices between the parties provided for or permitted under this  
10 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class  
11 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
12 party by the other party to the following addresses:

13                   For Kraco:

14   Steven E. Soule  
15   Kirkland & Ellis LLP  
16   333 S. Hope Street  
17   Los Angeles, CA 90071

18                   For Bell:

19   Evan J. Smith  
20   BRODSKY & SMITH, LLC  
21   9595 Wilshire Blvd., Suite 900  
22   Beverly Hills, CA 90212

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

25                   **9.     Authority to Stipulate**

26                   9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
27 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
28 the party represented and legally to bind that party.

**10.    Counterparts**

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

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**11. Retention of Jurisdiction**

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

**12. Service on the 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, commitment 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 to exist or to bind any of the parties.

**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 of California law.

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**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.

**IT IS SO STIPULATED:**

Dated: 9/27/16

Dated: 9-27-2016

By:   
Ema Bell

By:   
Kraco Enterprises, LLC

Dated: 9-27-2016

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

By:   
Auto Expressions, LLC

By: \_\_\_\_\_  
O'Reilly Automotive Stores, Inc.

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

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

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

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**15. Court Approval**

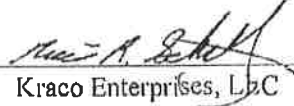
15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

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


Dated: 9-27-2016

By:  \_\_\_\_\_  
Emma Bell

By:  \_\_\_\_\_  
Kraco Enterprises, LLC

Dated: 9-27-2016

Dated: 10-27-2016

By:  \_\_\_\_\_  
Auto Expressions, LLC

By:  \_\_\_\_\_  
O'Reilly Automotive Stores, Inc.

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

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

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