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

11 EMA BELL,
12 Plaintiff,
13 v.
14 ABUS USA LLC.
15 Defendant.

16 Case No.: RG17875695
17 **CONSENT JUDGMENT**
18 Judge: Frank Roesch
19 Dept.: 24
20 Hearing Date: January 4, 2018
21 Hearing Time: 3:45 PM
22 Reservation #: R-1901036

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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 Abus USA, LLC (“Abus” or
4 “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as
5 a “Party.” Bell is an individual residing in California who seeks to promote awareness of exposures
6 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
7 contained in consumer products. Abus is 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 Diisononyl phthalate (DINP) from Abus security locks without providing clear and
11 reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical
12 known to the State of California to cause cancer.

13 **1.3 Notices of Violation/Complaint.** On or about March 29, 2017, Bell served Abus
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 Abus security locks
17 exposed users in California to DINP. No public enforcer has brought and is diligently prosecuting
18 the claims alleged in the Notice. On September 18, 2017, Bell filed a complaint in the matter (the
19 “Complaint”).

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

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

6 **2. DEFINITIONS**

7 **2.1 Covered Products.** The term “Covered Products” means Abus security products
8 of various size, configuration and packaging, including but not limited to padlocks, U-shackle
9 locks, foldable locks, bicycle locks, motorbike locks, cable locks, bicycle frame locks, lock chains;
10 keys and key blanks, component security products, cables, security boxes, lock holders that are
11 manufactured, distributed and/or offered for sale in California by Abus.

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 WARNINGS**

15 By no later than the Compliance Date, and continuing thereafter, Abus shall only
16 manufacture or import for potential sale in California, Covered Products that meet the
17 Reformulation Standards set forth in Section 3.1 below (“Reformulated Products”) or which meet
18 the warning requirements set forth in Section 3.2 below.¹

19 **3.1 Reformulation Standards.** For purposes of this Consent Judgment, Reformulated
20 Products are defined as Covered Products that contain no more than 1,000 parts per million (0.1%)
21 each of any of the following chemicals: DINP, Di-isodecyl phthalate (DIDP); Di(2-
22 ethylhexyl)phthalate (DEHP); Butyl benzyl phthalate (BBP), Di-n-hexyl Phthalate (DnHP) and Di-
23 n-butyl Phthalate (DBP) (“Listed Phthalates”); and the alloy from which the brass or other metal
24 components of the Covered Products is made shall have a Lead content by weight of no more than
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26 ¹ The “Compliance Date” shall mean January 31, 2018 or six months following the
27 Effective Date, whichever arises earlier. Covered Products manufactured for and imported by the
28 Abus prior to the Compliance Date are exempted from the requirements set forth in Sections 3.1
and 3.2 of the Consent Judgment and may be offered for sale in California and sold through as is.

1 300 parts per million (0.03%). For purposes of determining compliance with this Consent
2 Judgment, the content of Listed Phthalates shall be analyzed pursuant to EPA testing methodologies
3 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for the purpose
4 of determining Listed Phthalate content in a solid substance.

5 **3.2 Covered Product Warning(s).** For all Covered Products that contain a Listed
6 Phthalate or Lead in an amount exceeding the Reformulation Standards set forth in Section 3.1
7 above, and which are manufactured, sold or packaged for shipment to California following the
8 Compliance Date, Abus shall provide one of the following Proposition 65 warning(s):

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10 **WARNING:** This product contains a chemical[s] known to the State of California to cause
11 cancer, and birth defects or other reproductive harm.

12 or

13 **WARNING:** This product can expose you to chemicals including [name of chemical(s)],
14 which are/is known to the State of California to cause cancer (and birth defects or other
15 reproductive harm). For more information go to www.P65Warnings.ca.gov

16 Abus may, but is not required, to use the plural “chemicals” in the above warning statement if it
17 has knowledge that the Covered Products will expose users to other chemicals, in addition to DINP.
18 Further, the brackets may be filled with one or more chemicals listed pursuant to Proposition 65 if
19 Abus has a reasonable basis to know that more than one of the Listed Phthalates, and/or one of the
20 Listed Phthalates and Lead, may be in the Covered Products.²

21 **3.3** The warning(s) provided pursuant to Section 3.1 shall be affixed to or printed on the
22 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
23 on the packaging or labeling and displayed with such conspicuousness, as compared with other
24 words, statements, or designs as to render it likely to be read and understood by an ordinary
25 individual under customary conditions of purchase or use. A warning may be contained in the same

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27 ² Where only one of the Listed Phthalate and/or Lead exceeds the Reformulation
28 Standard, Abus may elect to have the warning statement refer to the word “chemical” in the
singular.

1 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
2 concerning the use of the product and shall be at least the same size as those other safety warnings.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Abus shall pay a Civil Penalty of \$2,000.00 pursuant to Health and
5 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
6 Code § 25192, with 75% of these funds remitted to the State of California's Office of
7 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Bell,
8 as provided by California Health & Safety Code § 25249.12(d).

9 4.1.1 Within ten (10) business days of the Effective Date, Abus shall issue two
10 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
11 (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. Payment owed to Bell
12 pursuant to this Section shall be delivered to the following payment address:

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

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

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
24 Sacramento, CA 95812-4010

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 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 4.2 **Conditional Civil Penalty.** One Hundred Twenty (120) days after the
2 Compliance Date, Abus shall make a Conditional Civil Penalty payment of \$2,000.00 on the same
3 terms as set forth in Section 4.1.1 pertaining to the Civil Penalty. Pursuant to Title 11 California
4 Code of Regulations, Section 3203(c), Bell agrees that the Conditional Civil Penalty payment shall
5 be waived in its entirety if, on or before the Conditional Civil Penalty payment is due, an officer of
6 Abus provides Plaintiff with a signed declaration certifying that all Covered Products it ships for
7 sale or distributes for sale in California as of the date of its certification are Reformulated Products
8 or are marked with the warnings required by this Consent Decree (hereinafter “Labeled Product”)
9 and that Abus will, to the best of its knowledge, continue to offer only Reformulated Products or
10 Labeled Products in California in the future. The option to provide a declaration certifying its
11 complete early reformulation or labeling of the Covered Products in lieu of making the Conditional
12 Civil Penalty payment otherwise required by this Section is a material term, and time is of the
13 essence.

14 4.3 **Attorney Fees.** Abus shall pay \$23,000.00 to Brodsky & Smith, LLC (“Brodsky
15 Smith”) as complete reimbursement for Plaintiff Bell’s attorneys’ fees and costs incurred as a result
16 of investigating, bringing this matter to Abus’ attention, litigating and negotiating and obtaining
17 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section
18 1021.5. Payment shall be made within fourteen (14) business days of the Effective Date and sent
19 to the address for Brodsky & Smith set forth in section 4.1.1, above.

20 **5. RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
22 in the public interest, and Abus, and its parents, shareholders, divisions, subdivisions, subsidiaries,
23 partners, sister companies, and affiliates, and their predecessors, successors and assigns, including
24 but not limited to ABUS August Bremicker Sohne KG (“Defendant Releasees”), and all entities
25 from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products,
26 including but not limited to Reseda Bikes, all other manufacturers, suppliers, distributors,
27 wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members
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1 (“Downstream Defendant Releasees”), of all claims for violations of Proposition 65 based on
2 exposure to the Listed Phthalates and/or Lead from the Covered Products, and with respect to any
3 Covered Products manufactured, distributed, or sold by Abus prior to the Compliance Date.
4 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
5 with regard to the Covered Products.

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

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

24 5.3 Abus waives any and all claims against Bell, her attorneys and other representatives,
25 for any and all actions taken or statements made (or those that could have been taken or made) by
26 Bell and her attorneys and other representatives, whether in the course of investigating claims or
27 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
28 Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
10 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
11 to the extent that, Covered Products are so affected.

12 **8. NOTICES**

13 8.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class, (registered or certified mail) return receipt requested; or (ii) overnight courier; and/or by
16 email on any party by the other party at the following addresses:

17 For Defendant:

18 Elizabeth V. McNulty
19 Taylor | Anderson LLP
20 19100 Von Karman Ave., Ste. 820
21 Irvine, Ca. 92612

22 And

23 For Bell:

24 Evan Smith
25 Brodsky & Smith, LLC
26 2 Bala Plaza, Suite 510
27 Bala Cynwyd, PA 19004

28 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.

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9. COUNTERPARTS; FACSIMILE SIGNATURES

9.1 This Consent Judgment may be executed in counterparts, by facsimile, or pdf 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 and 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.

12. ATTORNEY'S FEES

12.1 Each party agrees to bear its own 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.

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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: _____

Date: 10/16/17

By: _____
EMA BELL

By: [Signature], CEO
ABUS USA, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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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: 10/18/17

Date: _____

By: 
EMA BELL

By: _____
ABUS USA, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court