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7 *Attorneys for Plaintiff*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

v.

INSTYLE PRODUCTS, LLC,

Defendant.

Case No.: RG17880144

**CONSENT JUDGMENT**

Judge: Ronni MacLaren

Dept.: 25

Hearing Date: January 11, 2018

Hearing Time: 9:00 AM

Reservation #: R-1909518

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 Instyle Products, LLC (“Instyle” 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 that 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. Instyle is alleged by Bell to be a person in the course of doing  
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq. Instyle has  
9 fewer than ten employees.

10           1.2     **Allegations and Representations.** Bell alleges that Defendant has exposed  
11 individuals to Di(2-ethylhexyl) phthalate (DEHP) from cosmetic bags without providing clear and  
12 reasonable exposure warnings under Proposition 65. DEHP is listed under Proposition 65 as a  
13 chemical known to the State of California to cause cancer and reproductive toxicity.

14           1.3     **Notices of Violation/Complaint.** On or about July 12, 2017, Bell served Instyle,  
15 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”  
16 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in  
17 violation of Proposition 65 for failing to warn consumers and customers that cosmetic bags exposed  
18 users in California to DEHP. No public enforcer has brought and is diligently prosecuting the  
19 claims alleged in the Notice. On October 26, 2017, Bell filed a complaint (the “Complaint”) in the  
20 matter.

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

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 Instyle cosmetic bags,  
10 including but not limited to Instyle the Bumpbag, UPC No. 818665011282, that are manufactured,  
11 distributed and/or offered for sale in California by Instyle and that contain DEHP.

12           2.2 **Reformulated Products.** The term “Reformulated Products” means Covered  
13 Products intended for retail sale in California that contain 0.1% (1,000 ppm) or less of DEHP on  
14 any component to which consumers are exposed.

15           2.3 **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 As of the date this Consent Judgment is signed by both Parties, Instyle shall not  
19 manufacture or order from any supplier any Covered Products intended for retail sale in California  
20 that contains DEHP on any component to which consumers are exposed in excess of 0.1% (1,000  
21 ppm) unless the Covered Product is accompanied by a warning that complies with Article 6 of Title  
22 27 of the California Code of Regulations. Instyle shall have a period of one year from the date this  
23 Consent Judgment is signed by both Parties to sell through its inventory of Covered Products that  
24 were ordered prior to the date this Consent Judgment is signed, and sale of such products by  
25 Downstream Releasees shall be deemed to be compliance with Proposition 65. Until August 30,  
26 2018, the warning shall consist of either:  
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1 (a) The statement: “WARNING: This product contains a chemical known to the State  
2 of California to cause cancer and birth defects or other reproductive harm;” or

3 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle  
4 with a bold black outline to the left of the word “warning” in bold all capital letters, followed  
5 by the statement “This product can expose you to chemicals including Di(2-  
6 ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and  
7 birth defects or other reproductive harm. For more information, go to  
8 www.P65Warnings.ca.gov;”<sup>1</sup>

9 On and after August 30, 2018, the warning set forth in Section 3.1(b) shall be used.

10 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the  
11 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
12 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
13 with other words, statements, or designs as to render it likely to be read and understood by an  
14 ordinary individual under customary conditions of purchase or use. A warning may be contained  
15 in the same section of the packaging, labeling, or instruction booklet that states other safety  
16 warnings, if any, concerning the use of the product and shall be at least the same size as those other  
17 safety warnings.

#### 18 **4. MONETARY TERMS**

19 4.1 **Civil Penalty.** Instyle shall pay a Civil Penalty of \$2,000.00 pursuant to Health and  
20 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
21 Code § 25192, with 75% of these funds remitted to the State of California’s Office of  
22 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Bell,  
23 as provided by California Health & Safety Code § 25249.12(d).

24 4.1.1 Within fourteen (14) business days of the Effective Date, Instyle shall issue  
25 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;

26  
27 <sup>1</sup> The triangular symbol need only be in yellow where the sign, label, shelf tag or other  
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 and (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. Payment owed to  
2 Bell pursuant to this Section shall be delivered to the following payment address:

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

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
19 1001 I Street  
20 Sacramento, CA 95814

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

23 4.2 **Attorney Fees.** Instyle shall pay \$20,500.00 to Brodsky & Smith, LLC ("Brodsky  
24 Smith") as complete reimbursement for Plaintiff Bell's attorneys' fees and costs incurred as a result  
25 of investigating, bringing this matter to Instyle's attention, litigating and negotiating and obtaining  
26 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section  
27 1021.5.

28 4.3 Instyle shall pay the Civil Penalty and Attorney Fees identified in Sections 4.1 and  
4.2 within fourteen (14) days of the Effective Date.

**5. RELEASE OF ALL CLAIMS**

5.1 This consent judgment is a full, final, and binding resolution between Bell acting on  
her own behalf, and on behalf of the public interest, and Instyle, and its parents, shareholders,

1 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,  
2 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,  
3 successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to  
4 whom they directly or indirectly distribute or sell Covered Products, including but not limited to  
5 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,  
6 franchisees, and cooperative members, including but not limited to Rite Aid Corporation  
7 ("Downstream Releasees"), of all claims for violations of Proposition 65 that were or could have  
8 been asserted against Defendant Releasees or Downstream Releasees based on exposure to DEHP  
9 from Covered Products or failure to warn as set forth in the Notice, with respect to any Covered  
10 Products manufactured, distributed, or sold by Instyle prior to the Effective Date. This consent  
11 judgment shall have preclusive effect such that no other person or entity, whether purporting to act  
12 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action  
13 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have  
14 been brought pursuant to the Notice against Instyle or its Downstream Releasees of the Product,  
15 including but not limited to Rite Aid Corporation ("Proposition 65 Claims"). Compliance with the  
16 terms of this consent judgment constitutes compliance with Proposition 65 with regard to the  
17 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, and *not* in her representative capacity,  
20 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action  
21 and releases Instyle, Defendant Releasees, and Downstream Releasees from any and all manner of  
22 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,  
23 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature  
24 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with  
25 respect to Covered Products manufactured, distributed, or sold by Instyle, Defendant Releasees or  
26 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell  
27 hereby specifically waives any and all rights and benefits which she now has, or in the future may  
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1 have, conferred by virtue of the provisions of Section 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  
7 SETTLEMENT WITH THE DEBTOR.

8 5.3 Instyle waives any and all claims against Bell, her attorneys and other  
9 representatives, for any and all actions taken or statements made by Bell and her attorneys and other  
10 representatives, whether in the course of investigating claims or otherwise seeking enforcement of  
11 Proposition 65 against it in this matter, and/or with respect to Covered Products.

## 12 6. INTEGRATION

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

## 17 7. GOVERNING LAW

18 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
19 California and apply within the State of California. In the event that Proposition 65 is repealed or  
20 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products or the  
21 listed chemical, then Defendant shall have no further obligations pursuant to this Consent Judgment  
22 with respect to, and to the extent that, Covered Products are so affected. If Proposition 65 or  
23 associated regulations are amended to require or allow different text, font, and/or methods of  
24 warning than specified above, Instyle, after providing written notice to Bell, may substitute such  
25 text, font, and/or methods of warning for product warnings required under this Consent Judgment.

## 26 8. NOTICES

27 8.1 Unless specified herein, all correspondence and notices required to be provided  
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
2 by the other party at the following addresses:

3 For Defendant:

4 Instyle Products, LLC  
5 c/o Carmen Pagan Gonzalez  
6 475 Howe Ave.  
7 Shelton, CT 06484

8 with a copy to:

9 Jeffrey Parker, Esq.  
10 Sheppard Mullin Richter & Hampton LLP  
11 333 South Hope Street, 43rd Floor  
12 Los Angeles, CA 90071-1422

13 For Bell:

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

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

25 **APPROVAL**

26 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety  
27 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
28 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.



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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 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable 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 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 herein each Party is to bear its own fees and costs.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 11/8/2017

By: \_\_\_\_\_  
EMA BELL

By:   
INSTYLE PRODUCTS, 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 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 herein each Party is to bear its own fees and costs.

**AGREED TO:**

**AGREED TO:**

Date: 11/19/17

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
EMA BELL

By: \_\_\_\_\_  
INSTYLE PRODUCTS, LLC

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

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

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