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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 EMA BELL,
12 Plaintiff,
13 v.
14 COUSIN CORPORATION OF AMERICA,
15 Defendant.

Case No.: HG19013200
CONSENT JUDGMENT
Judge: Jenna Whitman
Dept.: 507
Hearing Date: July 16, 2019
Hearing Time: 1:30 PM
Reservation #: R-2078317

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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 Cousin Corporation of America
4 (“Cousin Corp.” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties”
5 and each of them as a “Party.” Bell is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. Cousin Corp. is alleged to be a person in
8 the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6
9 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 Cousin tool carry cases without
12 providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed
13 under Proposition 65 as a chemical known to the State of California to cause cancer and
14 reproductive toxicity.

15 **1.3 Notice of Violation/Complaint.** On or about November 27, 2018, Bell served
16 Cousin Corp., and various public enforcement agencies with documents entitled “60-Day Notice
17 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
18 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Cousin
19 tool carry cases expose users in California to DEHP. No public enforcer has brought and is
20 diligently prosecuting the claims alleged in the Notice. On April 2, 2019, Bell filed a complaint
21 (the “Complaint”) 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, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 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 Cousin tool carry cases
10 that are manufactured, distributed and/or offered for sale in California by Cousin Corp.

11 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: WARNINGS**

14 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
15 signed by both Parties, and continuing thereafter, Covered Products that Cousin Corp. directly
16 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
17 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
18 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
19 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
20 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
21 Product.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of DEHP when
24 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
25 8270C or other methodology utilized by federal or state government agencies for the purpose of
26 determining the phthalate content in a solid substance.

1 3.3 **Clear and Reasonable Warning.** Commencing on the date this Consent Judgment
2 is signed by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set
3 forth in 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 Warnings:** Cousin Corp. may, but is not required to, use the alternative
13 short-form warning as set forth in this § 3.3(b) or the slightly modified and more specific warning
14 including the reference to Phthalates (“**Alternative Warning**”) as follows:

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

16 -OR-

17 ⚠ **WARNING:** Cancer and Reproductive Harm – Phthalates – www.P65Warnings.gov

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

1 safety warnings, if any, concerning the use of the Covered Product and shall be at least the same
2 size as those other safety warnings.

3 If Cousin Corp. sells Covered Products via an internet website to its customers located in
4 California, the warning requirements of this section shall be satisfied if the foregoing warning
5 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
6 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
7 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
8 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
9 to or immediately following the display, description, price, or checkout listing of the Covered
10 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
11 associates it with the product(s) to which the warning applies. Cousin shall not be responsible for
12 a failure of a third party who purchases or sells the Covered Product via such third party's website
13 and fails to post an appropriate Warning or Alternative Warning so long as the product as sold by
14 Cousin Corp. complies herewith.

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

19 **4. MONETARY TERMS**

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

24 4.1.1 Within ten (10) days of the Effective Date, Cousin Corp. shall issue two
25 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
26 to (b) "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$500.00. Payment owed to
27 Bell pursuant to this Section shall be delivered to the following payment address:
28

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

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

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

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

21 4.2 **Attorneys' Fees.** Cousin Corp. shall pay \$20,500.00 to Brodsky & Smith, LLC
22 ("Brodsky Smith") as complete reimbursement for Bell's attorneys' fees and costs incurred as a
23 result of investigating, bringing this matter to Cousin Corp.'s attention, litigating and negotiating
24 and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
25 Procedure § 1021.5. Payment shall be made in two (2) equal monthly payments of \$10,250.00. The
26 first payment of \$10,250.00 shall be made (a) by or before the 30th day after the Effective Date;
27 and the second payment of \$10,250.00 shall be made (b) by or before the 60th day after the Effective
28 Date. Cousin Corp. shall be liable for a late payment fee equal to \$100/day for each payment
pursuant to this Section that is not received within five (5) days of the date it is due.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
31 on her own behalf, and on behalf of the public interest, and Cousin Corp., and its parents,
32 shareholders, members, directors, officers, managers, employees, representatives, agents,

1 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
2 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
3 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
4 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
5 retailers, franchisees, and cooperative members, including but not limited to Hobby Lobby Stores,
6 Inc. (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to
7 DEHP from Covered Products as set forth in the Notice, with respect to any Covered Products
8 manufactured, distributed, or sold by Cousin Corp. prior to the Effective Date. This Consent
9 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
10 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
11 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
12 been brought pursuant to the Notice against Cousin Corp. and/or the Downstream Releasees of the
13 Covered Products (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment
14 constitutes compliance with Proposition 65 with regard to the Covered Products.

15 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
16 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
17 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
18 and releases Cousin Corp., Defendant Releasees, and Downstream Releasees from any and all
19 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
20 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
21 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
22 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
23 Products manufactured, distributed, or sold by Cousin Corp., Defendant Releasees or Downstream
24 Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell hereby
25 specifically waives any and all rights and benefits which she now has, or in the future may have,
26 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
27 follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
5 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
6 DEBTOR OR RELEASED PARTY.

7 5.3 Cousin Corp. 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,
11 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, then
21 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
22 to the extent that, Covered Products are so affected.

23 **8. NOTICES**

24 8.1 Unless specified herein, all correspondence and notices required to be provided
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
26 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
27 by the other party at the following addresses:

28 For Defendant:

Rochelle Friedman Walk
AEGIS Law
100 S. Ashley Drive, Suite 620
Tampa, FL 33602

1 And

2 For Bell:

3 Evan Smith
4 Brodsky & Smith, LLC
5 9595 Wilshire Blvd., Ste. 900
6 Beverly Hills, CA 90212

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and
12 the same document.

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

15 10.1 Bell agrees to comply with the requirements set forth in California Health & Safety
16 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
17 Defendant agrees it shall support approval of such Motion.

18 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
19 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
20 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
21 30 days, the case shall proceed on its normal course.

22 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
23 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
24 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
25 its normal course on the trial court's calendar.

26 **11. MODIFICATION**

27 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
28 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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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.

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: 5/28/19
By: [Signature]
EMA BELL

Date: 5/9/19
By: [Signature]
COUSIN CORPORATION OF AMERICA

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court