

1 Evan Smith (Bar No. SBN 242352)  
2 BRODSKY & SMITH, LLC.  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212  
5 Tel: (877) 534-2590  
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 CVS PHARMACY, INC., ALMAR SALES CO.,  
15 INC.,

16 Defendants.

Case No.: CGC-20-583875

**CONSENT JUDGMENT**

Judge: Ethan P. Schulman  
Dept.: 302  
Hearing Date: September 8, 2020  
Hearing Time: 9:30 AM  
Reservation #:

1           **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Precila Balabbo  
3 acting on behalf of the public interest (hereinafter “Plaintiff” or “Balabbo”), and Almar Sales Co.,  
4 Inc. (“Almar” or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties”  
5 and each of them as a “Party.” Balabbo is an individual residing in California who 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. Almar is alleged to be a person in the course  
8 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.5 et seq.  
9 (“Proposition 65”)

10           **1.2 Allegations.** Balabbo alleges that Defendant has exposed California consumers to  
11 di(2-ethylhexyl) phthalate (“DEHP”) from its manufacture, import, distribution and/or sale in  
12 California of Almar Sales Company Expressions hairband super packs, My Princess Academy  
13 Backpack Makeup Collections, and other carrying cases and carrying bags of any kind that are  
14 either empty or that contain accessories, including but not limited to backpacks, knapsacks, totes,  
15 pouches, or other similar products, without providing a clear and reasonable warning pursuant to  
16 Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California  
17 to cause cancer and reproductive harm.

18           **1.3 Notices of Violation/Complaints.** On or about March 19, 2019, Balabbo served  
19 Almar, CVS Pharmacy, Inc. (“CVS”) and various public enforcement agencies with documents  
20 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “March  
21 NOV”), alleging that Almar and CVS violated Proposition 65 by failing to warn California  
22 consumers that the use of Almar Sales Company Expressions hairband super packs and other  
23 products of a similar type manufactured, imported, distributed and/or sold by Almar and/or CVS  
24 exposed California consumers to DEHP without a Proposition 65 warning. Thereafter, on  
25 November 27, 2019, Balabbo served Almar, Homegoods, Inc. (“Homegoods”) and various public  
26 enforcement agencies with a second set of documents entitled “60-Day Notice of Violation”  
27 pursuant to Health & Safety Code §25249.7(d) (the “November NOV”), alleging that Almar and  
28

1 Homegoods violated Proposition 65 by failing to warn California consumers that the use of My  
2 Princess Academy Backpack Makeup Collections and other products of a similar type  
3 manufactured, imported, distributed and/or sold by Almar and/or Homegoods exposed California  
4 consumers to DEHP without a Proposition 65 warning. The March NOV and the November NOV  
5 are collectively referred to herein as the "Notices." To the best of the Parties' knowledge, no public  
6 enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On March 25,  
7 2020, Balabbo filed a complaint (the "Complaint") based on the March Notice. On July 10, 2020,  
8 Balabbo filed a first amended complaint (the "Amended Complaint") based on the Notices and for  
9 the purposes of identifying Almar as a defendant. The Complaint and Amended Complaint are  
10 collectively referred to herein as, the "Action."

11 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
12 jurisdiction over Defendant as to the allegations contained in the Action, that venue is proper in the  
13 County of San Francisco, and that this Court has jurisdiction to approve, enter, and oversee the  
14 enforcement of this Consent Judgment as a full and final binding resolution in the public interest  
15 of all claims which were or could have been raised in the Action based on the facts alleged therein  
16 and in the Notices.

17 1.5 Defendant enters into this Consent Judgment solely to avoid prolonged and costly  
18 litigation. Defendant denies the material factual and legal allegations contained in the Notices and  
19 Action, and maintains that all products that it has manufactured, imported, sold, and/or distributed  
20 in California, including the types of products covered by the Notices and Action, have been and are  
21 in compliance with all laws, and are completely safe for their intended use. Nothing in this Consent  
22 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or  
23 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an  
24 admission by Defendant of any fact, finding, conclusion, issue of law or violation of law, such  
25 being specifically denied by Defendant. However, this § 1.5 shall not diminish or otherwise affect  
26 the Parties' obligations, responsibilities and duties under this Consent Judgment. Notwithstanding  
27 the allegations in the Notices and Action, Defendant maintains that it has not knowingly  
28

1 manufactured, or caused to be manufactured, any products (including but not limited to the Covered  
2 Products defined below) for sale in California in violation of Proposition 65.

3 **2. DEFINITIONS**

4       **2.1 Covered Products.** The term “Covered Products” means all Almar carrying cases  
5 and carrying bags of any kind that are either empty or that contain accessories, including but not  
6 limited to backpacks, knapsacks, totes, pouches, or other similar products manufactured by or for  
7 Almar, or imported, sold or distributed by Almar, under any Almar tradename such as  
8 “Expressions,” “My Princess Expressions,” or “My Princess Academy,” including but not limited  
9 to Almar Sales Company Expressions hairband super packs and My Princess Academy Backpack  
10 Makeup Collections including, but not limited to, UPC Nos. 024576830656 and 024576764586.

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: REFORMULATION OR WARNINGS**

14       **3.1 Reformulation of Covered Products.** As of the Effective Date, and continuing  
15 thereafter, Covered Products that Almar manufactures, imports, distributes, sells, or offers for sale  
16 in California shall either be: (1) Reformulated Products pursuant to § 3.2, below; or (2) labeled with  
17 a clear and reasonable warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent  
18 Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the  
19 reformulation standard set forth in § 3.2 below. The warning requirements set forth in §§ 3.3 and  
20 3.4 shall not apply to any Reformulated Product.

21       **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
22 that contain concentrations less than or equal to 0.1% (1,000 parts per million (“ppm”)) each of  
23 DEHP, dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”), diisodecyl phthalate (“DIDP”),  
24 di-n-hexyl phthalate (“DnHP”), and butyl benzyl phthalate (“BBP”), in any accessible components  
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
26 and 8270C, or other methodologies utilized by federal or state government agencies for the purpose  
27 of determining the phthalate content in a solid substance.  
28

1           3.3     **Clear and Reasonable Warnings.** As of the Effective Date, and continuing  
2 thereafter, a clear and reasonable warning as set forth in this §§ 3.3 and 3.4 must be provided for  
3 all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in  
4 California that are not Reformulated Products. There shall be no obligation for Defendant to  
5 provide a warning for any Covered Products that are not Reformulated Products that are  
6 manufactured or otherwise enter the stream of commerce prior to the Effective Date. The warning  
7 shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),  
8 respectively:

9           (a)     **Warning.** The “Warning” shall consist of one of the following statements:

10           ⚠ [California Proposition 65] **WARNING:** This product can expose you to  
11 chemicals including di(2-ethylhexyl) phthalate (DEHP), which are known to the  
12 State of California to cause cancer and birth defects or other reproductive harm. For  
more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

15           ⚠ [California Proposition 65] **WARNING:** Cancer and Reproductive Harm -  
16 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

17           3.4     A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
18 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
19 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
20 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
21 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
22 than the height of the word “**WARNING:**”. Language in brackets above is optional. The warning  
23 shall be affixed to or printed on the Covered Product’s packaging, its container, instruction booklet,  
24 or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, displayed with  
25 such conspicuousness, as compared with other words, statements, or designs, as to render it likely  
26 to be read and understood by an ordinary individual under customary conditions of purchase or use.  
27 A warning may be contained in the same section of the packaging or labeling that states other safety  
28

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

If Almar sells Covered Products via its internet website to customers located in California, the warning requirements of this section shall be satisfied if one of the foregoing warnings or a clearly marked hyperlink to the warning using the word(s) “[California Proposition 65] **WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the same web page as the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Covered Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

**3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in compliance with this Consent Judgment for Covered Products that are not Reformulated Products by either adhering to §§ 3.3 and 3.4 of this Consent Judgment, or by complying with any warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

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

**4.1 Civil Penalty.** In complete resolution of any claim for monetary relief of any kind related to the Notices, the Action, and this Consent Judgment (except Plaintiff’s attorney’s fees as set forth in Section 4.2 below), Almar shall pay a total of \$5,000 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), with 75% of the Civil Penalty remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12.

**4.1.1** Within ten (10) days of the Effective Date, Almar shall send two separate checks for the Civil Penalty payment to: (a) “OEHHA” in the amount of \$3,750; and (b)

1 “Brodsky & Smith, LLC in Trust for Balabbo” in the amount of \$1,250. Payment owed to  
2 Balabbo 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 or emailed to Brodsky & Smith, LLC at  
22 the address set forth above as proof of payment to OEHHA.

23 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Almar shall send a  
24 check for a total of \$40,000 made payable to Brodsky & Smith, LLC (“Brodsky Smith”) as  
25 complete reimbursement and resolution of any claim for Balabbo’s attorneys’ fees and costs or  
26 other expenses of any kind incurred in connection with the Notices, the Action, and this Consent  
27 Judgment, as a result of activities including but not limited to investigating, testing, bringing this  
28 matter to Almar’s attention, litigating, negotiating, and obtaining judicial approval of this Consent  
Judgment in the public interest pursuant to Code of Civil Procedure § 1021.5, and any other statute  
or common law of similar effect.

1       **5. PUBLIC RELEASE OF ALL CLAIMS**

2           5.1     This Consent Judgment is a full, final, and binding resolution between Balabbo  
3 acting on her own behalf, and on behalf of the public interest, and Almar, and its parents,  
4 shareholders, members, directors, officers, managers, employees, representatives, agents,  
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they  
7 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
8 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,  
9 retailers (including but not limited to CVS, Homegoods, Party City Corporation, Amscan Inc., Ross  
10 Stores, Inc., the TJX Companies, Inc., and each of their affiliates), franchisees, and cooperative  
11 members, and each of their parents, shareholders, members, directors, officers, managers,  
12 employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister  
13 companies, and affiliates, and their predecessors, successors and assigns (collectively “Releasees”),  
14 of all claims for actual or alleged violations of Proposition 65 based on exposure to DEHP from  
15 Covered Products as set forth in the Notices and the Action, with respect to any Covered Products  
16 manufactured, imported, distributed, or sold by Almar prior to the Effective Date. This Consent  
17 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act  
18 in his, her, or its interests, or in the public interest, shall be permitted to pursue and/or take any  
19 action with respect to any violation of Proposition 65 that was alleged in the Notices and/or the  
20 Action, or that could have been brought pursuant to the Notices and/or Action against Almar, the  
21 Defendant Releasees, and/or the Releasees for Covered Products manufactured, imported,  
22 distributed, or sold through the Effective Date of this Consent Judgment (“Proposition 65 Claims”).  
23 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
24 regarding actual or alleged DEHP, DINP, DBP, BBP, DIDP, and DnHP in the Covered Products.

25           5.2     In addition to the foregoing, Balabbo, on behalf of herself, her past and current  
26 agents, representatives, attorneys, and successors and/or assignees, and not in her representative  
27 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
28



1 legal action and releases Almar, Defendant Releasees, and Releasees, from any and all manner of  
2 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,  
3 promises, liabilities, damages, penalties, charges, losses, costs, expenses, and attorneys' fees, of  
4 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the  
5 future, with respect to any actual or alleged violations of Proposition 65 related to or arising from  
6 Covered Products manufactured, imported, distributed, or sold by Almar, Defendant Releasees or  
7 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby  
8 specifically waives any and all rights and benefits which she now has, or in the future may have,  
9 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
10 follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
12 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
13 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
14 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

15 Balabbo, on behalf of herself, her past and current agents, representatives, attorneys, and  
16 successors and/or assignees, expressly waives and relinquishes any and all rights and benefits that  
17 she or they may have under, or that may be conferred upon them by, the provisions of California  
18 Civil Code § 1542 as well as under any other state or federal statute or common law principle of  
19 similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to  
20 the released matters.

21 5.3 Almar waives any and all claims against Balabbo, her attorneys and other  
22 representatives, for any and all actions taken or statements made (or those that could have been  
23 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of  
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
25 and/or with respect to Covered Products.

## 26 **6. INTEGRATION**

27 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
28 any and all prior negotiations and understandings related hereto shall be deemed to have been

merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**7. GOVERNING LAW**

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

**8. NOTICES**

8.1 Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered or certified mail, return receipt requested; or (2) overnight courier on any Party by the other Party at the following addresses:

For Defendant:

Almar & Bros., Inc.  
c/o President/CEO  
320 5<sup>th</sup> Avenue  
New York, NY 100018

With copies to:

Jeffrey Dweck, Esq.  
The Law Firm of Jeffrey S. Dweck, P.C.  
43 West 33rd Street, Suite 304  
New York, New York 10001

And

J. Robert Maxwell  
ROGERS JOSEPH O'DONNELL  
A Professional Law Corporation  
311 California Street, 10th Fl.  
San Francisco, CA 94104

And

For Balabbo:

Evan Smith  
Brodsky & Smith, LLC

1 9595 Wilshire Blvd., Ste. 900  
2 Beverly Hills, CA 90212

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

5 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

6 9.1 This Consent Judgment may be executed in counterparts and by facsimile or pdf,  
7 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
8 one and the same document.

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

11 10.1 Balabbo agrees to comply with the requirements set forth in California Health &  
12 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
13 Defendant agrees it shall support approval of such Motion.

14 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
15 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
16 Parties agree to meet and confer in good faith on how to proceed and if such agreement is not  
17 reached within 30 days, the case shall proceed on its normal course.

18 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
19 appellate court, the Parties shall meet and confer in good faith as to whether to modify the terms of  
20 this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case  
21 shall proceed on its normal course on the trial court's calendar.

22 **11. SEVERABILITY**

23 11.1 If, subsequent to the Court's approval and entry of this Consent Judgment as a  
24 judgment, any provision of this Consent Judgment is held by a court to be unenforceable, the  
25 validity of the remaining provisions shall not be adversely affected.

26 **12. JOINT PREPARATION**

27 12.1 The Parties have jointly participated in the preparation of this Consent Judgment  
28 and this Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any

1 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
2 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
3 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to  
4 be resolved against the drafting Party shall not be employed in the interpretation of this Consent  
5 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

6 **13 MODIFICATION**

7 13.1 This Consent Judgment may be modified only by further stipulation of the Parties  
8 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

9 **14 ATTORNEY'S FEES**

10 14.1 The only persons who may enforce this Consent Judgment are the Parties hereto.  
11 No Party shall bring a motion to enforce the terms of this Consent Judgment without first providing  
12 notice to the other party and meeting and conferring in good faith about the alleged violation for a  
13 period of at least 30 days. A Party who unsuccessfully brings or contests an action arising out of  
14 this Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees  
15 and costs. Nothing in this Section shall preclude a Party from seeking an award of sanctions  
16 pursuant to law.

17 **15 RETENTION OF JURISDICTION**

18 15.1 This Court shall retain jurisdiction of this matter to implement or modify the  
19 Consent Judgment.

20 [REMAINDER OF PAGE INTENTIONALL LEFT BLANK]  
21  
22  
23  
24  
25  
26  
27  
28

1 **16 AUTHORIZATION**

2 16.1 The undersigned warrant that they are authorized to execute this Consent Judgment  
3 on behalf of their respective Parties and have read, understood, and agree to all of the terms and  
4 conditions of this Consent Judgment, and certify that each is fully authorized by the Party he or she  
5 represents to execute the Consent Judgment on behalf of the Party represented and legally bind that  
6 Party. Except as explicitly provided herein each Party is to bear its own attorney's fees and costs.  
7

8 **AGREED TO:**

**AGREED TO:**

9  
10 Date: 6/19/2020

Date: 6/24/2020

11 By:   
12 PRECILA BALABBO

By:   
ALMAR SALES CO., INC.

13  
14 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

15  
16 Dated: \_\_\_\_\_

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