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

11 EMA BELL,

12 Plaintiff,

13 v.

14 ROYALE LINENS, INC., ROSS STORES, INC.,

15 Defendants.

Case No.: CGC-22-600421

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: April 17, 2024

Hearing Time: 9:30 AM

Complaint Filed: June 28, 2022

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell acting on behalf of the public interest (“Plaintiff” or “Bell”) and Royale Linens, Inc. (“Royale Linens” or “Settling Defendant”) with Plaintiff and Settling Defendant collectively referred to as the “Parties,” and each of them individually as a “Party.” Plaintiff is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Royale Linens is alleged to be an entity in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

1.2 **Allegations and Representations.** Plaintiff alleges that Royale Linens exposed individual consumers in the State of California to di(2-ethylhexyl) phthalate (“DEHP”) through its manufacture, import, distribution and/or sale of certain bedding cases/bags without providing a clear and reasonable warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 **Notice of Violation/Complaint.** On or about July 6, 2021, Plaintiff served Royale Linens, Ross Stores, Inc. (“Ross”), and various public enforcement agencies with documents entitled “60-Day Notice of Violation” (the “Notice”), pursuant to Health & Safety Code §25249.7(d), alleging that Royal Linens and Ross violated Proposition 65 by failing to warn California consumers that use of Gingham & Thread bedding cases/bags can expose said consumers to DEHP. To the best of the Parties’ knowledge, no public enforcer has brought, nor is diligently prosecuting the claims alleged in the Notice. On June 28, 2022, Plaintiff filed a complaint concerning the allegations set forth in the Notice (the “Complaint”).

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Settling Defendant as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution in the public

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interest of all claims, which were or could have been raised in the Notice and Complaint based on the facts alleged therein.

1.5 Settling Defendant denies the material, factual, and legal allegations contained in the Notice and Complaint, including but not limited to the allegation that it is a person in the course of doing business for purposes of Proposition 65, and maintains that all products it has manufactured, imported, sold, and/or distributed in California, including the types of products covered by the Notice and Complaint, have been, and remain, in compliance with all laws, and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission by Settling Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Settling Defendant. Notwithstanding the allegations in the Notice and Complaint, Settling Defendant and Ross maintain that they have not knowingly manufactured, or caused to be manufactured, any products (including, without limitation, the Covered Products [defined herein]) for sale in California in violation of Proposition 65. However, Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities, and duties under this Consent Judgment.

1.6 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Settling Defendant as to the allegations contained in the Complaint, that venue is proper in San Francisco County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment

2. DEFINITIONS

2.1 **Covered Products.** The term "Covered Products" means all bedding cases/bags that are manufactured, distributed and/or offered for sale in California by Royale Linens.

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


3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

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


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

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

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

2  [California Prop. 65] **WARNING:** [The case for] this product can expose you
3 to chemicals including di(2-ethylhexyl) phthalate (DEHP), which are known to the
4 State of California to cause cancer and birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov.

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

7  [California Prop. 65] **WARNING:** [The case for this product is subject to the following
8 warning:] Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

9 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
10 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
11 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
12 triangle with a black outline, except that if the sign or label for the Covered Product does not use
13 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
14 than the height of the word “**WARNING:**”. Language in brackets in the warnings in Section 3.3
15 above is optional. The **Warning** or **Alternative Warning** shall be affixed to or printed on the
16 Covered Product’s packaging, its container, instruction booklet, or labeling, or on a placard, shelf
17 tag, sign or electronic device or automatic process, displayed with such conspicuousness, as
18 compared with other words, statements, or designs as to render it reasonably likely to be read and
19 understood by an ordinary individual under customary conditions of purchase or use. The **Warning**
20 or **Alternative Warning** may be contained in the same section of the packaging, labeling, or
21 instruction booklet that states other safety warnings, if any, concerning the use of the Covered
22 Products, and shall be at least the same size as those other safety warnings.

23 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
24 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
25 Royale Linens offers Covered Products for sale to consumers in California. The requirements of
26 this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked
27 hyperlink using the word “[California Prop. 65] **WARNING,**” appears on the product display page
28 [language in brackets optional], or by otherwise prominently displaying the warning to the

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purchaser prior to completing the purchase. To comply with this Section, Royale Linens shall post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet resellers. If Royale Linens has actual knowledge a third-party internet seller is offering Covered Products for sale to California consumers, Royale Linens shall provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2.

3.5 **Compliance with Warning Regulations.** Settling Defendant shall be deemed to be in compliance with this Consent Judgment and Proposition 65 with respect to DEHP, DINP, DIDP, DBP, BBP, and DnHP by adhering to § 3 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”) applicable to the Covered Product and the exposures at issue after the Effective Date. If “consumer information” (as defined in 27 Cal Code of Regs Section 25600.1(c)) is provided in a foreign language on a Covered Product’s packaging or labeling, Royale Linens shall also provide the **Warning** in the foreign language on the Covered Product’s packaging or labeling. If “consumer information” (as defined in 27 Cal Code of Regs Section 25600.1(c)) is provided in a foreign language on a warning sign prepared by Royale Linens, Royale Linens shall also provide the **Warning** in the foreign language on the warning sign for the Covered Product.

4. **MONETARY TERMS**

4.1 **Civil Penalty.** In complete resolution of any claim for monetary relief of any kind related to the Notice, the Complaint, and this Consent Judgment (except Plaintiff’s attorney’s fees as set forth in § 4.2 below), Royale Linens shall pay a total of \$1,000 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Plaintiff, as provided by California Health & Safety Code § 25249.12(d).

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2 4.1.1 Within ten (10) days of the Effective Date, Royale Linens shall issue two
3 separate checks for the Civil Penalty payment to: (a) "OEHHA" in the amount of \$750; and to (b)
4 "Ema Bell" in the amount of \$250. Payment owed to Bell pursuant to this Section shall be delivered
5 to the following payment address:

6 Evan J. Smith, Esquire
7 Brodsky & Smith
8 Two Bala Plaza, Suite 805
9 Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

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

18 For Non-United States Postal Service Delivery:

19 Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 1001 I Street
23 Sacramento, CA 95814

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

26 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Royale Linens shall
27 pay a total of \$18,000 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement and
28 in resolution of any claim for Bell's attorneys' fees and costs or other expenses of any kind incurred
in connection with the Notice, and as a result of investigating, bringing this matter to Royale Linens
attention, preparing and filing the Complaint, and 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

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5. PUBLIC 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 Royale Linens, including its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns (the “Defendant Releasees”), and all entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers (including but not limited to Ross), franchisees, and cooperative members, and each of their parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns (collectively, the “Downstream Releasees”), of all claims for actual or alleged violations of Proposition 65 based on alleged or actual exposure to DEHP from use of the Covered Products as set forth in the Notice and Complaint, with respect to any Covered Products manufactured, distributed, or sold by Settling Defendant prior to the Effective Date. It is the Parties’ intent that this Consent Judgment shall have preclusive effect such that no other actions by a private enforcer, whether purporting to act in his, her, or its own interests or the public interest, shall be permitted to pursue and/or take any action with respect to any alleged or actual violation of Proposition 65 based on exposure to DEHP that was alleged in the Notice and/or Complaint, or that could have been brought pursuant to the Notice and/or Complaint against Settling Defendant, the Defendant Releasees, and/or the Downstream Releasees for Covered Products manufactured, imported, distributed, or sold through the Effective Date of this Consent Judgment (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 regarding actual or alleged DEHP.

1 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
2 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
4 and releases Settling Defendants, Defendant Releasees, and Downstream Releasees from any and
5 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
8 future, with respect to Covered Products manufactured, imported, distributed, or sold by Settling
9 Defendant, Defendant Releasees or Downstream Releasees through the Effective Date. With
10 respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any
11 and all rights and benefits which she now has, or in the future may have, conferred by virtue of the
12 provisions of § 1542 of the California Civil Code, which provides as follows:

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

19 Bell, on behalf of herself, her past and current agents, representatives, attorneys, and successors
20 and/or assignees, expressly waives and relinquishes any and all rights and benefits that she or they
21 may have under, or that may be conferred upon them by, the provisions of California Civil Code
22 § 1542 as well as under any other state or federal statute or common law principle of similar effect,
23 to the fullest extent they may lawfully waive such rights or benefits pertaining to the released
24 matters.

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

1 5.4 Compliance with the injunctive relief provisions of § 3 of this Consent Judgment
2 constitutes compliance with Proposition 65 with respect to DEHP in Covered Products.

3 **6. ENFORCEMENT OF JUDGMENT**

4 6.1 Any alleged violation of the terms of this Consent Judgment shall be enforced
5 exclusively hereunder by the Parties hereto. Before Plaintiff moves to enforce the terms of this
6 Consent Judgment, Plaintiff must provide written notice to Defendant of any alleged violation
7 and provide all evidence supporting the alleged violation including any applicable test results,
8 product photographs, and purchase receipts, subject to a reasonable confidentiality agreement if
9 requested. The Parties will thereafter meet and confer for a minimum period of thirty (30) days to
10 allow time for Settling Defendants to present to Plaintiff any relevant compliance information
11 and/or corrective action taken related to the alleged violation, including if applicable the date of
12 manufacture, import, distribution, or sale of the Covered Product at issue for purposes of
13 determining the applicability of the release hereunder. If the Parties cannot resolve the alleged
14 violation, either Party may move to enforce the terms of this Consent Judgment consistent with
15 the terms hereof.

16 **7. INTEGRATION**

17 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
18 prior negotiations and understandings related hereto shall be deemed to have been merged within
19 it. No representations or terms of agreement other than those contained herein exist or have been
20 made by any Party with respect to the other Party or the subject matter hereof.

21 **8. GOVERNING LAW**

22 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
24 rendered inapplicable by reason of law generally, or as to Covered Products, Settling Defendant
25 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
26 extent that Covered Products are so affected.

1 **9. NOTICES**

2 9.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (1) first-
4 class, registered, or certified mail, return receipt requested; or (2) overnight courier on any Party
5 by the other Party at the following addresses:

6 For Defendant:

7 Prem S. Katyal, CPA
8 Chief Financial Officer
9 Royale Linens, Inc.
10 330 Fifth Ave. (6th Floor)
11 New York, NY 10001

12 With Copy to:

13 J. Robert Maxwell, Esq.
14 Rogers Joseph O'Donnell
15 311 California Street, 10th Floor
16 San Francisco, CA 94104-2695
17 JMaxwell@rjo.com

18 And for Bell:

19 Evan Smith
20 Brodsky & Smith
21 9595 Wilshire Blvd., Ste. 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 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

26 10.1 This Consent Judgment may be executed in counterparts and by facsimile or .pdf,
27 each of which shall be deemed an original, and all of which, when taken together, shall constitute
28 one and the same document.

1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 11.1 Bell agrees to comply with the requirements set forth in California Health & Safety
4 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Settling
5 Defendant agrees it shall support approval of such Motion.

6 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **12. JOINT PREPARATION**

15 11.1 The Parties have jointly participated in the preparation of this Consent Judgment
16 and this Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any
17 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
18 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
19 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
20 be resolved against the drafting Party shall not be employed in the interpretation of this Consent
21 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

22 **13. MODIFICATION**

23 13.1 This Consent Judgment may be modified only by further stipulation of the Parties
24 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

25 **14. ATTORNEY'S FEES**

26 14.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
27 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.
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14.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

15. RETENTION OF JURISDICTION

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

16. AUTHORIZATION

16.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understand, 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: 2 / 28 / 24
By: *EMA BELL*
EMA BELL

Date: 12/15/2023
By: *Prem S. Katyal*
ROYALE LINENS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court