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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 LIFEGUARD PRESS, INC., SAKS &
15 COMPANY, LLC,

16 Defendants.

Case No.: CGC-22-599694

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: March 11, 2024

Hearing Time: 9:30 AM

Complaint Filed: May 19, 2022

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Erma Bell acting
3 on behalf of the public interest (hereinafter “Bell”) and Lifeguard Press, Inc. (“Lifeguard Press” 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. Lifeguard Press is alleged to be a person in the course of doing
8 business for purposes of 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 bisphenol A (BPA) from its sales of the *Lilly Pulitzer*® iPhone case, UPC #
11 825466991521, without providing a clear and reasonable exposure warning pursuant to Proposition
12 65. BPA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
13 birth defects or other reproductive harm.

14 **1.3 Notice of Violation/Action.** On or about August 13, 2021, Bell served Lifeguard
15 Press and various public enforcement agencies with documents entitled “60-Day Notice of
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
17 violated Proposition 65 for failing to warn consumers and customers that use of the *Lilly Pulitzer*®
18 iPhone case, UPC # 825466991521, expose users in California to BPA. No public enforcer has
19 brought and is diligently prosecuting the claims alleged in the Notice. On May 19, 2022, Bell filed
20 a complaint (the “Complaint”).

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 San Francisco, and that this Court has jurisdiction to approve,**
24 **enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution**
25 **of all claims which were or could have been raised in the complaint based on the facts alleged**
26 **therein and 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 the *Lilly Pulitzer®* iPhone
10 case, UPC # 825466991521, which is manufactured, distributed, shipped into California or offered
11 for sale in California by Lifeguard Press.

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 OR WARNINGS**

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

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean any Covered
23 Products subject to this Consent Judgment that achieve a wipe test result equal to, or less than, 3
24 micrograms of BPA.

25 3.2.1 **Wipe Test Protocol.** The “Wipe Test Protocol” for determining if a Covered
26 Product is a Reformulated Product is as follows:
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1 3.2.1(a) Accessible sample surface of the Covered Product is rubbed by
2 wipe sample swabs/paper wetted with HPLC grade water heated to 98 °F sixteen (16) times along
3 longitudinal, latitudinal and diagonal orientation.

4 3.2.1(b) Wipe sample swabs/paper is extracted with methanol on wrist
5 shaker for one (1) hour and analyzed by LC/MS/MS.

6 **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing
7 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
8 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
9 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
10 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
11 the date this Consent Judgment is signed by both Parties. The warning shall consist of either the
12 **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

13 (a) **Warning.** The “Warning” shall consist of the statement:

14 ⚠ **WARNING:** This product can expose you to chemicals including bisphenol
15 A (BPA), which are known to the State of California to cause birth defects or
16 other reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

19 ⚠ **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

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

1 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
2 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
3 the use of the Covered Product and shall be at least the same size as those other safety warnings.

4 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
5 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
6 Lifeguard Press offers Covered Products for sale to consumers in California. The requirements of
7 this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked
8 hyperlink using the word "**WARNING**," appears on the product display page, or by otherwise
9 prominently displaying the warning to the purchaser prior to completing the purchase. To comply
10 with this Section, Lifeguard Press shall (a) post the **Warning** or **Alternative Warning** on its own
11 website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b)
12 if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its
13 third-party internet sellers, provide such sellers with written notice in accordance with Title 27,
14 California Code of Regulations, § 25600.2. Sales after the Effective Date by third-party internet
15 sellers of the Covered Product that have been provided with written notice in accordance with Title
16 27, California Code of Regulations, § 25600.2 are not released in Section 5 of this Agreement if
17 they fail to meet the warning requirements herein.

18 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
19 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
20 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
21 Covered Product and exposures at issue after the Effective Date. If consumer information is
22 provided by Lifeguard Press in a foreign language, Lifeguard Press shall provide the **Warning** in
23 the foreign language.

24 4. **MONETARY TERMS**

25 4.1 **Civil Penalty.** Lifeguard Press shall pay \$1,000.00 as a Civil Penalty pursuant to
26 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
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1 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
2 the Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

3 4.1.1 Within ten (10) days of the Effective Date, Lifeguard Press shall issue two
4 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to
5 (b) "Ema Bell" in the amount of \$250.00. Payment owed to Bell pursuant to this Section shall be
6 delivered to the following payment address:

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

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

13 For United States Postal Service Delivery:
14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:
20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

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

27 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Lifeguard Press shall
28 pay \$14,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
incurred as a result of investigating, bringing this matter to the attention of Lifeguard Press,
litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
pursuant to Code of Civil Procedure § 1021.5, and any other basis to claim fees or costs.

29 **5. RELEASE OF ALL CLAIMS**

30 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 Lifeguard Press, and its parents,

1 shareholders, members, directors, officers, managers, employees, representatives, agents,
2 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
3 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
4 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
5 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
6 retailers, including but not limited to, Saks & Company, LLC, and its parents, subsidiaries, and
7 affiliates, franchisees, and cooperative members (“Downstream Releasees”), of all claims for
8 violations of Proposition 65 based on exposure to BPA from use of the Covered Products
9 manufactured, distributed, or sold by Lifeguard Press prior to the Effective Date as set forth in the
10 Notice. It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that
11 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
12 public interest shall be permitted to pursue and take any action with respect to any violation of
13 Proposition 65 based on exposure to BPA from use of the Covered Products that was alleged in the
14 Complaint, or that could have been brought pursuant to the Notice against Lifeguard Press and the
15 Downstream Releasees (“Proposition 65 Claims”). Lifeguard Press’s compliance with the terms of
16 this Consent Judgment constitutes compliance with Proposition 65 by Lifeguard Press with regard
17 to exposure to BPA from use of the 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 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 Lifeguard Press, Defendant Releasees, and Downstream Releasees from any and all
22 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
23 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
24 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
25 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
26 Products manufactured, distributed, or sold by Lifeguard Press, Defendant Releasees or
27 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell
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1 hereby specifically waives any and all rights and benefits which she now has, or in the future may
2 have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides
3 as follows:

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

10 5.3 Lifeguard Press waives any and all claims against Bell, her attorneys and other
11 representatives, for any and all actions taken, or statements made (or those that could have been
12 taken or made) by Bell and her attorneys and other representatives, whether in the course of
13 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
14 and with respect to Covered Products.

15 **6. INTEGRATION**

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

20 **7. GOVERNING LAW**

21 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and apply within the State of California. In the event that Proposition 65 is repealed or
23 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
24 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
25 to the extent that, Covered Products are so affected.

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

1 For Defendant:

2 Gary M. Roberts
3 Dentons US LLP
4 601 S. Figueroa St., Ste. 2500,
Los Angeles, CA 90017

5 And

6 For Bell:

7 Evan Smith
8 Brodsky Smith
9 9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

13 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
14 which shall be deemed an original, and all of which, when taken together, shall constitute one and
the same document.

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

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

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

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

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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. RETENTION OF JURISDICTION

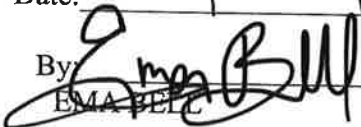
12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

13. AUTHORIZATION

13.1 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: 1 / 24 / 24
By: 
EMMA BELL

Date: January 16, 2024
By: 
LIFEGUARD PRESS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court