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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 BANGARANG ENTERPRISES, LLC dba
15 GANDER GROUP, GROCERY OUTLET,
16 INC.,

17 Defendants.

Case No.: CGC-23-604134

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: May 24, 2024

Hearing Time: 9:30 AM

Complaint Filed: January 20, 2023

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell acting
3 on behalf of the public interest (hereinafter “Bell”) and Bangarang Enterprises LLC dba Gander
4 Group (“Gander” 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. Gander is alleged to be a person in the
8 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et
9 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 Kathy Ireland Resorts pillow
12 bags without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP
13 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer
14 and birth defects or other reproductive harm.

15 1.3 **Notice of Violation/Action.** On or about March 16, 2022, Bell served Grocery
16 Outlet Holding Corp., Grocery Outlet, Inc. (collectively, “Grocery Outlet”), Gander, Bangarang
17 Enterprises, LLC, and various public enforcement agencies with documents entitled “60-Day
18 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
19 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Kathy
20 Ireland Resorts pillow bags exposes users in California to DEHP. No public enforcer has brought
21 and is diligently prosecuting the claims alleged in the Notice. On January 20, 2023, Bell filed a
22 complaint (the “Complaint”).

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

2 1.5 Defendant denies the material allegations contained in Bell’s Notice and Complaint
3 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
4 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
5 shall compliance with this Consent Judgment constitute or be construed as an admission by
6 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
7 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
8 responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Kathy Ireland Resorts
11 pillow bags that are manufactured, distributed, shipped into California and offered for sale in
12 California by Gander.

13 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

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

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

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1 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
3 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
12 www.P65Warnings.ca.gov.

13 (b) **Alternative Warning:** Gander 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 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

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

1 consumer information is provided in a foreign language, Gander shall provide the **Warning** in the
2 foreign language.

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

16 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
17 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
18 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
19 Covered Product and exposures at issue after the Effective Date.

20 4. **MONETARY TERMS**

21 4.1 **Civil Penalty.** Gander shall pay \$3,000.00 as a Civil Penalty pursuant to Health and
22 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
23 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
24 Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

25 4.1.1 By or before the Effective Date, Gander shall issue two separate checks for
26 the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to (b) "Ema Bell" in
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1 the amount of \$750.00. Payment owed to Bell pursuant to this Section shall be delivered to the
2 following payment address:

3 Evan J. Smith, Esquire
4 Brodsky Smith
5 Two Bala Plaza, Suite 805
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 OEHHA
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 OEHHA
19 1001 I Street
20 Sacramento, CA 95814

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

23 **4.2 Attorneys' Fees.** Within ten (10) days of the Effective Date, Gander shall pay
24 \$36,000.00 to Brodsky Smith as complete reimbursement for Bell's attorneys' fees and costs
25 incurred as a result of investigating, bringing this matter to the attention of Gander, litigating and
26 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
27 of Civil Procedure § 1021.5.

28 **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 Gander, and 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 ("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, Grocery Outlet, and its parents, subsidiaries, and affiliates, franchisees,
and cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65

1 based on exposure to DEHP from use of the Covered Products manufactured, distributed, or sold
2 by Gander prior to the Effective Date as set forth in the Notice. It is the Parties' intention that this
3 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
4 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
5 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
6 DEHP from use of the Covered Products that was alleged in the Complaint, or that could have been
7 brought pursuant to the Notice against Gander and the Downstream Releasees ("Proposition 65
8 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
9 Proposition 65 with regard to exposure to DEHP from use of the Covered Products.

10 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
11 representatives, attorneys, and successors and assignees, and *not* in her representative capacity,
12 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
13 and releases Gander, Defendant Releasees, and Downstream Releasees from any and all manner of
14 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
15 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
16 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
17 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
18 manufactured, distributed, or sold by Gander, Defendant Releasees or Downstream Releasees. With
19 respect to the foregoing waivers and releases in this paragraph, Bell hereby specifically waives any
20 and all rights and benefits which she now has, or in the future may have, conferred by virtue of the
21 provisions of § 1542 of the California Civil Code, which provides as follows:

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

28 5.3 Gander waives any and all claims against Bell, her attorneys and other
representatives, for any and all actions taken, or statements made (or those that could have been
taken or made) by Bell and her attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
2 and with respect to Covered Products.

3 **6. INTEGRATION**

4 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
5 any and all prior negotiations and understandings related hereto shall be deemed to have been
6 merged within it. No representations or terms of agreement other than those contained herein exist
7 or have been made by any Party with respect to the other Party or the subject matter hereof.

8 **7. GOVERNING LAW**

9 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed or
11 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
13 to the extent that, Covered Products are so affected.

14 **8. NOTICES**

15 8.1 Unless specified herein, all correspondence and notices required to be provided
16 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
17 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
18 by the other party at the following addresses:

19 For Defendant:	For Bell:
John P. Einwechter, Esq.	Evan Smith
Law Offices of Einwechter & Hyatt LLP	Brodsky Smith
172 N. Tustin St., Ste. 304	9595 Wilshire Blvd., Ste. 900
Orange, CA 92867	Beverly Hills, CA 90212

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

24 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

25 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
26 which shall be deemed an original, and all of which, when taken together, shall constitute one and
27 the same document.

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

2 **APPROVAL**

3 10.1 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.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 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 10.3 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 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: _____

Date: 4/5/24

10 By: _____

By: 

11 EMA BELL

BANGARANG ENTERPRISES LLC dba
GANDER GROUP

12
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14
15 Dated: _____

Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: 4/5/24

Date: _____

10 By: 

By: _____

11 EMA BELL

12 BANGARANG ENTERPRISES LLC dba
GANDER GROUP

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

14
15 Dated: _____

16 _____
Judge of Superior Court