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ALAMEDA COUNTY

FEB 05 2018

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,
v.
LYLE ENTERPRISES, INC.,
Defendant.

Case No.: RG17857025
CONSENT JUDGMENT
Judge: Julia Spain
Dept.: 520
Hearing Date: December 6, 2017
Hearing Time: 2:00 PM
Reservation #: R-1897592

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Lyle Enterprises, Inc., an Idaho Corporation (“Lyle” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in 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. Lyle is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed individuals to Di(2-ethylhexyl) phthalate (DEHP) from See Your Stuff Storage Bags without providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity and cancer. Lyle denies all of the allegations made by Ferreiro.

1.3 **Notices of Violation/Complaint.** On or about February 17, 2017 Ferreiro served Lyle and various public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in violation of Proposition 65 for failing to warn consumers and customers that See Your Stuff Storage Bags exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On April 18, 2017, Ferreiro filed a complaint in the matter (the “Complaint”).

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

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means See Your Stuff Storage
11 Bags, UPC No. 7 66516 14001 1, that are manufactured, distributed and/or offered for sale in
12 California by Lyle, and that may contain DEHP.

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; WARNINGS**

16 3.1 Commencing ninety (90) days after the Effective Date, Lyle shall not manufacture,
17 import, or offer for sale in California any Covered Product that contains more than 1,000 parts per
18 million DEHP, unless the Covered Product is accompanied by the following warning:
19 "WARNING: This product contains a chemical known to the State of California to cause cancer,
20 birth defects and other reproductive harm."

21 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
22 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
23 on the packaging or labeling and displayed with such conspicuousness, as compared with other
24 words, statements, or designs as to render it likely to be read and understood by an ordinary
25 individual under customary conditions of purchase or use. A warning may be contained in the same
26 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
27 concerning the use of the product and shall be at least the same size as those other safety warnings.
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1 **4. MONETARY TERMS**

2 4.1 **Initial Civil Penalty.** Lyle shall pay an Initial Civil Penalty of \$500.00 pursuant to
3 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
4 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
5 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
6 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

7 4.1.1 Within ten (10) business days of the Effective Date, Lyle shall issue two
8 separate checks for the Initial Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00;
9 and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$125.00. Payment owed
10 to Ferreiro pursuant to this Section shall be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky & Smith, LLC
13 Two Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
19 P.O. Box 4010
 Sacramento, CA 95812-4010

20 For Non-United States Postal Service Delivery:

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

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

26 4.2 **Final Civil Penalty.** One Hundred Twenty (120) days after the Effective Date,
27 Lyle shall make a Final Civil Penalty payment of \$500.00 on the same terms as set forth in Section
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1 4.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code of Regulations,
2 Section 3203(c), Ferreiro agrees that the Final Civil Penalty payment shall be waived in its entirety
3 if, on or before the Final Civil Penalty payment is due, an officer of Lyle provides Plaintiff with a
4 signed declaration certifying that all Covered Products it ships for sale or distributes for sale in
5 California as of the date of its certification are Reformulated Products or are marked with the
6 warnings required by this Consent Decree (hereinafter "Labeled Product") and that Lyle will, to
7 the best of its knowledge, continue to offer only Reformulated Products or Labeled Products in
8 California in the future. The option to provide a declaration certifying its complete early
9 reformulation or labeling of the Covered Products in lieu of making the Final Civil Penalty payment
10 otherwise required by this Section is a material term, and time is of the essence.

11 4.3 **Attorney Fees.** Lyle shall pay \$9,500.00 to Brodsky & Smith, LLC ("Brodsky
12 Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a
13 result of investigating, bringing this matter to Lyle's attention, litigating and negotiating and
14 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
15 Procedure section 1021.5. The timing specified for payment required by this Section is a material
16 term, and time is of the essence. The payment required by this subsection 4.3 shall be made in two
17 installments as follows:

18 4.3.1 Within ten (10) business days of the Effective Date, Lyle shall issue a check
19 for Attorney Fees and Costs payable to "Brodsky & Smith, LLC" in the amount of \$4,500.00 and
20 delivered to the address listed in Section 4.1.1 above.

21 4.3.2 Within ninety (90) calendar days of the Effective Date, Lyle shall issue a
22 second check for Attorney Fees and Costs payable to "Brodsky & Smith, LLC" in the amount of
23 \$5,000.00 and delivered to the address listed in Section 4.1.1 above

24 4.4 Lyle shall be liable for reimbursement of additional attorney fees and costs
25 ("Additional Fees") totaling \$1,000.00, with respect to any and all amounts due and owing under
26 this Consent Judgment that are not received within five (5) calendar days of the date they are due.
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5. RELEASE OF ALL CLAIMS

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro acting in the public interest, and Lyle, and its parents, officers, directors, shareholders, and employees, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their 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 Wal-Mart Stores, Inc., Walmart.comUSA, LLC (collectively, “Walmart”), Notions Marketing, Corp., manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members (“Downstream Defendant Releasees”), of all claims for violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by Lyle prior to one hundred twenty (120) days after the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any Lyle, Defendant Releasees, and Downstream Defendant Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured distributed or sold by Lyle or Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH



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THE DEBTOR.

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

6. INTEGRATION

6.1 This Consent Judgment contains the sole and entire agreement of the Parties and 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: (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:

For Defendant:

Bradley A. Post
Borton Petrini Law Offices
201 Needham Street
Modesto, CA 95354

And
For Ferreiro:

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

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

16 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
17 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
18 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
19 30 days, the case shall proceed on its normal course.

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

24 **11. MODIFICATION**

25 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
26 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

27 **12. ATTORNEY'S FEES**

28 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 unless



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the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

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 certifies that he or she is fully authorized by the Party he or she represents to execute

1 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
2 explicitly provided herein each Party is to bear its own fees and costs.
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4 **AGREED TO:**

AGREED TO:

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6 Date: Oct 5, 2017

Date: 9/27/17

7
8 By: Anthony Ferreiro
9 ANTHONY FERREIRO

LYLE ENTERPRISES, INC.
By: Steve Lyle
Steve Lyle, authorized agent

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

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13 Dated: 2/5/18

Julia A. Spain
Judge of Superior Court JULIA A. SPAIN

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