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**FILED**  
**ALAMEDA COUNTY**  
**OCT 10 2018**  
**CLERK OF THE SUPERIOR COURT**  
By *Dennis Hayashi* Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 GLP STORES, LLC,

15 Defendant.

Case No.: RG18897260

**CONSENT JUDGMENT**

Judge: Dennis Hayashi

Dept.: 518

Hearing Date: August 29, 2018

Hearing Time: 2:30 PM

Reservation #: R-1967782

**BY FAX**

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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 GLP Stores, LLC ("GLP Stores" 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 that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. GLP Stores is alleged to be 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 Diisononyl phthalate (DINP) from its sales of Icarus chair covers without providing clear and reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notice of Violation/Complaint.** On or about April 5, 2017, Ferreiro served GLP Stores, and various public enforcement agencies with documents 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 sales of Icarus chair covers has exposed users in California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On March 19, 2018, Ferreiro filed a complaint (the "Complaint") in the matter.

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.

1           1.5 Defendant denies the material allegations contained in Ferreiro's Notice and  
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8           2. **DEFINITIONS**

9           2.1 **Covered Products.** The term "Covered Products" means Icarus chair covers that  
10 are manufactured, distributed, sold and/or offered for sale in California by GLP Stores.

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: WARNINGS**

14           3.1 As of the date this Consent Judgment is signed by both Parties, GLP Stores, shall  
15 not manufacture or order from any supplier any Covered Products intended for retail sale in  
16 California that contains DINP on any component to which consumers are exposed in excess of  
17 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Covered Product is  
18 accompanied by a warning that complies with Article 6 of Title 27 of the California Code of  
19 Regulations. Covered Products sold by GLP Stores, before the date this Consent Judgment is  
20 signed by both Parties may sell through without a warning even if not Reformulated Products. Until  
21 August 30, 2018, the warning shall consist of either:

- 22           (a) The statement: "**WARNING:** This product contains a chemical known to the State  
23 of California to cause cancer."; or (b) A symbol consisting of a black exclamation point in  
24 a yellow equilateral triangle with a bold black outline to the left of the word "warning" in  
25 bold all capital letters, followed by the statement "This product can expose you to chemicals  
26 including Diisononyl phthalate (DINP), which is known to the State of California to cause  
27 cancer. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)"; or (c) a symbol  
28

1 consisting of a black exclamation point in a yellow equilateral triangle with a bold black  
2 outline to the left of the word "warning" in bold all capital letters, followed by the statement  
3 "Cancer- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."<sup>1</sup>

4 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section  
5 3.1(b) or 3.1(c) shall be used.

6 3.2 Any warning provided pursuant to Section 3.1(a) or 3.1(b) shall be affixed to or  
7 printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic  
8 device or automatic process. Any warning provided pursuant to Section 3.1(c) shall be on the  
9 Covered Product's label.

10 3.3 Any warning provided pursuant to Section 3.1 shall be displayed with such  
11 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
12 read and understood by an ordinary individual under customary conditions of purchase or use. A  
13 warning may be contained in the same section of the packaging, labeling, or instruction booklet  
14 that states other safety warnings, if any, concerning the use of the product and shall be at least the  
15 same size as those other safety warnings.

#### 16 4. MONETARY TERMS

17 4.1 Civil Penalty. GLP Stores, shall pay \$500.00 as a Civil Penalty pursuant to Health  
18 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
19 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of  
20 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the Civil Penalty  
21 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

22 4.1.1 Within fourteen (14) days of the date this Agreement is entered as a  
23 Judgment by the Court, GLP Stores, shall issue two separate checks for the Civil Penalty payment  
24 to (a) "OEHHA" in the amount of \$375.00; and to (b) "Brodsky & Smith, LLC in Trust for  
25

26  
27 <sup>1</sup> The triangular symbol need only be in yellow where the sign, label, shelf tag or other  
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 Ferreiro" in the amount of \$125.00. Payment owed to Ferreiro pursuant to this Section shall be  
2 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 OEHHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
8 to OEHHHA (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 OEHHHA shall be mailed to Brodsky & Smith, LLC at the address  
22 set forth above as proof of payment to OEHHHA.

23 4.2 **Attorneys' Fees.** Within fourteen (14) days of the date this Agreement is entered as  
24 a Judgment by the Court, GLP Stores, shall pay \$12,000.00 to Brodsky & Smith, LLC ("Brodsky  
25 Smith") as complete reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of  
26 investigating, bringing this matter to GLP Stores' attention, litigating and negotiating and obtaining  
27 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section  
28 1021.5.

## 29 5. **RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
31 acting on his own behalf, and on behalf of the public interest, and GLP Stores, and its parents,  
32 shareholders, members, directors, officers, managers, employees, representatives, agents,

1 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
2 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
3 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
4 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
5 retailers, franchisees, and cooperative members, including but not limited to Wal-Mart Stores, Inc.  
6 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to  
7 DINP from Covered Products as set forth in the Notice, with respect to any Covered Products  
8 manufactured, distributed, or sold by GLP Stores, prior to the Effective Date or within ninety (90)  
9 days after the Effective Date. This Consent Judgment shall have preclusive effect such that no  
10 other person or entity, whether purporting to act in his, her, or its interests or the public interest  
11 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65  
12 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against  
13 GLP Stores, or its Downstream Releasees of the Product including but not limited to ("Proposition  
14 65 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with  
15 Proposition 65 with regard to the Covered Products.

16       5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
17 agents, representatives, attorneys, and successors and/or assignees, and not in his representative  
18 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
19 legal action and releases GLP Stores, Defendant Releasees, and Downstream Releasees from any  
20 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
21 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
22 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
23 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
24 from Covered Products manufactured, distributed, or sold by GLP Stores, Defendant Releasees or  
25 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
26 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the  
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1 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,  
2 which provides as follows:

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

8 5.3 GLP Stores, waives any and all claims against Ferreiro, his attorneys and other  
9 representatives, for any and all actions taken or statements made (or those that could have been  
10 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
11 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
12 and/or with respect to Covered Products.

13 6. INTEGRATION

14 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
15 any and all prior negotiations and understandings related hereto shall be deemed to have been  
16 merged within it. No representations or terms of agreement other than those contained herein exist  
17 or have been made by any Party with respect to the other Party or the subject matter hereof.

18 7. GOVERNING LAW

19 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
20 California and apply within the State of California. In the event that Proposition 65 is repealed or  
21 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
22 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
23 to the extent that, Covered Products are so affected.

24 8. NOTICES

25 8.1 Unless specified herein, all correspondence and notices required to be provided  
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
27 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party  
28 by the other Party at the following addresses:

1 For Defendant:

2 GLP Stores, LLC  
3 Ngua A. Phang  
4 5980 88<sup>th</sup> Street  
Sacramento, CA 95828

5 And

6 For Ferreiro:

7 Evan Smith  
8 Brodsky & Smith, LLC  
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  
15 the same document.

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

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

21 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
22 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
23 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
24 30 days, the case shall proceed on its normal course.

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



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. ATTORNEY'S FEES

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.

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 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:

July 10, 18

Date:

5-24-2018

By:

Anthony Ferrero  
ANTHONY FERRERO

By:

[Signature]  
GLP STORES, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

10/9/18

[Signature]