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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,
v.
DELFONICS CO., LTD.,
Defendant.

Case No.: RG18903146

CONSENT JUDGMENT

Judge: Evelio Grillo

Dept.: 15

Hearing Date: August 3, 2018

Hearing Time: 10:00 AM

Reservation #: R-1970947

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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

By: *Damela [Signature]* Deputy

BY FAX

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Delfonics Co., Ltd.
4 (“Delfonics” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties”
5 and each of them individually as a “Party.” Ferreiro is an individual residing in California that
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
7 or eliminating hazardous substances contained in consumer products. Delfonics is alleged to be a
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 § 25249.6 *et seq.*

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to Diisononyl phthalate (“DINP”) from Delfonics Quitterie C’est Mon Tresor Faux
12 Leather Pouches without providing clear and reasonable warnings under Proposition 65. DINP is
13 listed under Proposition 65 as a chemical known to the State of California to cause cancer.

14 **1.3 Notice of Violation/Complaint.** On or about August 22, 2017, Ferreiro served
15 Delfonics, 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 was in violation of Proposition 65 for failing to warn consumers and customers that Delfonics
18 Quitterie C’est Mon Tresor Faux Leather Pouches may have exposed users in California to DINP.
19 No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
20 May 1, 2018, Ferreiro filed a complaint (the “Complaint”) in the matter.

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 Alameda, and that this Court has jurisdiction to approve, enter,
24 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
25 claims which were or could have been raised in the Complaint based on the facts alleged therein
26 and/or in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Delfonics Quitterie C'est
11 Mon Tresor Faux Leather Pouches/Bags/Wallets/Cases that are manufactured, distributed and/or
12 offered for sale in California by Delfonics.

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

24 (a) The statement: "WARNING: This product contains a chemical known to the State
25 of California to cause cancer"; or

26 (b) A symbol consisting of a black exclamation point in a yellow equilateral triangle
27 with a bold black outline to the left of the word "warning" in bold all capital letters, followed
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1 by the statement: "This product can expose you to chemicals including Diisononyl phthalate
2 (DINP), which is known to the State of California to cause cancer. For more information,
3 go to www.P65Warnings.ca.gov"; or (2) a warning consisting of a symbol that is a black
4 exclamation point in a yellow equilateral triangle with a bold black outline to the left of the
5 word "warning" in bold all capital letters, followed by the statement "Cancer -
6 www.P65Warnings.ca.gov."¹

7 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section
8 3.1 (b) shall be used.

9 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
10 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
11 automatic process, providing that the warning is displayed with such conspicuousness, as compared
12 with other words, statements, or designs as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use. A warning may be contained
14 in the same section of the packaging, labeling, or instruction booklet that states other safety
15 warnings, if any, concerning the use of the product and shall be at least the same size as those other
16 safety warnings.

17 4. MONETARY TERMS

18 4.1 **Civil Penalty.** Delfonics shall pay a Civil Penalty of \$2,000.00 pursuant to Health
19 and Safety Code §25249.7(b), to be apportioned in accordance with California Health & Safety
20 Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental
21 Health Hazard Assessment ("OEHHA") and the remaining 25% of the Civil Penalty remitted to
22 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

23 4.1.1 Within fourteen (14) business days of the Effective Date, Delfonics shall
24 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
25 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00.

27 ¹ 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 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
2 address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith, LLC
5 Two Bala Plaza, Suite 510
6 Bala Cynwyd, PA 19004

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

8 For United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010
13 Sacramento, CA 95812-4010

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

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

18 4.2 **Attorneys' Fees.** Within fourteen (14) business days of the Effective Date,
19 Delfonics shall pay \$23,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete
20 reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a result of investigating,
21 bringing this matter to Delfonics' attention, litigating and negotiating and obtaining judicial
22 approval of a settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
25 acting on his own behalf, and on behalf of the public interest, and Delfonics of any and all direct
26 or derivative violations (or claimed violations) of Proposition 65 or its implementing regulations
27 and fully resolves all claims that have been or could have been asserted in this Complaint up to and
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1 including the Effective Date. Ferreiro, on behalf of himself and in the public interest, hereby
2 forever releases and discharges Delfonics, its parents, shareholders, members, directors, officers,
3 managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,
4 partners, sister companies, and affiliates, and their predecessors, successors and assigns
5 (“Defendant Releasees”), and all entities from whom they obtain and to whom they directly or
6 indirectly distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
7 distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative
8 members, including but not limited to Nordstrom, Inc. and Sweet Bella, LLC (“Downstream
9 Releasees”), of all claims, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
10 liabilities and demands of any nature, character, or kind, whether known or unknown, suspected or
11 unsuspected, arising out of alleged or actual exposure to DINP from Covered Products
12 manufactured, distributed, or sold by Delfonics up to and including the Effective Date. This
13 Consent Judgment shall have preclusive effect such that no other person or entity, whether
14 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or
15 take any action with respect to any violation of Proposition 65 or implementing regulations that
16 were alleged in the Complaint, or that could have been brought against Delfonics or its Defendant
17 Releasees or Downstream Releasees of the Product. Compliance with the terms of this Consent
18 Judgment constitutes compliance with Proposition 65 and implementing regulations with regard to
19 the Covered Products.

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

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

11 5.3 Ferreiro, on the one hand, and Delfonics, on the other hand, each release and waive
12 any and all claims against each other, their respective attorneys and other representatives, for any
13 and all actions taken or statements made (or those that could have been taken or made) by them or
14 their attorneys and other representatives, whether in the course of investigating claims or otherwise
15 seeking enforcement of Proposition 65 in this matter, and/or with respect to Covered Products.
16 However, this shall not affect or limit any Party's right to seek to enforce the terms of this Consent
17 Judgment.

18 **6. INTEGRATION**

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

23 **7. GOVERNING LAW**

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

1 **8. NOTICES**

2 8.1 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: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses; (iii) along with an electronic copy to the following
6 addresses:

7 For Defendant:

8 Hazel Ocampo
9 Procopio Cory Hargreaves & Savitch LLP
10 525 B St., Ste. 2200
11 San Diego, CA 92101
 hazel.ocampo@procopio.com

12 And for Ferreiro:

13 Evan Smith
14 Brodsky & Smith, LLC
 9595 Wilshire Blvd., Ste. 900
15 Beverly Hills, CA 90212
 esmith@brodskysmith.com

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

19 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
20 which shall be deemed an original, and all of which, when taken together, shall constitute one and
21 the same document.

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

24 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
25 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
26 Defendant agrees it shall support approval of such Motion.

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
3 the Parties agree to meet and confer on how to proceed.

4 10.3 If the California Attorney General objects to any term in this Consent Judgment, the
5 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
6 the hearing on the motion.

7 10.4 If the Court approves this Consent Judgment and is reversed or vacated by an
8 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
9 Judgment.

10 **11. MODIFICATION**

11 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
12 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

13 **12. ATTORNEY'S FEES**

14 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
15 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

16 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
17 pursuant to law.

18 **13. RETENTION OF JURISDICTION**

19 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **14. AUTHORIZATION**

22 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
23 respective Parties and have read, understood and agree to all of the terms and conditions of this
24 document and certify that he or she is fully authorized by the Party he or she represents to execute
25 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
26 explicitly provided herein each Party is to bear its own fees and costs.
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AGREED TO:

AGREED TO:

Date: 6/12/18

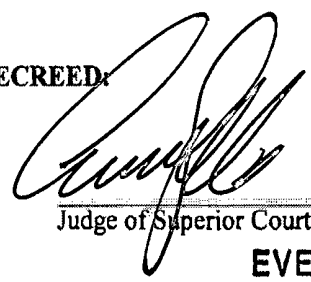
Date: 25. 5. 2018

By: *Anthony Ferreiro*
ANTHONY FERREIRO

By: *林育誠*
DELPHONICS CO., LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: AUG 07 2018


Judge of Superior Court

EVELIO M. GRILLO
JUDGE