

AUG 14 2018

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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 07 2018

CLERK OF THE SUPERIOR COURT  
By T. Lopez  
DEPUTY

AUG 14 2018

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

1 ANTHONY FERREIRO,  
2  
3 Plaintiff,

4 v.,

5 J.C.S. APPAREL GROUP, INC.,  
6  
7 Defendant.

Case No.: RG18906599

CONSENT JUDGMENT

Judge: Jo-Lynne Q. Lee  
Dept.: 18  
Hearing Date: October 2, 2018  
Hearing Time: 3:00 PM  
Reservation #: R-1986009

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CONSENT JUDGMENT

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 J.C.S. Apparel Group,  
4 Inc. ("J.C.S. Apparel Group" or "Defendant"), with Ferreiro and Defendant collectively referred to  
5 as the "Parties" and each of them as a "Party." Ferreiro is an individual residing in California who  
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. J.C.S. Apparel Group is  
8 alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health  
9 & Safety Code §§ 25249.6 et seq.

10           **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Faux Leather Jackets without  
12 first providing clear and reasonable exposure warnings under Proposition 65. DEHP is listed under  
13 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive  
14 toxicity.

15           **1.3 Notice of Violation/Complaint.** On or about December 4, 2017, Ferreiro served  
16 J.C.S. Apparel Group and various public enforcement agencies with documents entitled "60-Day  
17 Notice of Violation" pursuant to Health & Safety Code § 25249.7(d) (the "Notice"), alleging that  
18 Defendant was in violation of Proposition 65 for failing to warn consumers and customers that Faux  
19 Leather Jackets exposed users in California to DEHP. No public enforcer has brought and is  
20 diligently prosecuting the claims alleged in the Notices. On May 29, 2018, Ferreiro filed a  
21 complaint (the "Complaint") in the matter.

22           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
25 and oversee the enforcement of this Consent Judgment as a full, final, and binding resolution of all  
26 claims which were or could have been raised in the Complaint based on the facts alleged therein  
27 and/or in the Notice.  
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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 Faux Leather Jackets that  
10 are manufactured, distributed and/or offered for sale in California by J.C.S. Apparel Group.

11           2.2     **Effective Date.** The term "Effective Date" means the date this Consent Judgment  
12 is entered as a Judgment of the Court.

13           3.     **INJUNCTIVE RELIEF: WARNINGS**

14           3.1     Commencing one hundred twenty (120) days after the Effective Date, J.C.S.  
15 Apparel Group shall not manufacture or order from any supplier any Covered Products intended  
16 for retail sale in California that contains DEHP on any component to which consumers are exposed  
17 in excess of 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Covered Product  
18 is accompanied by a warning that complies with Article 6 of Title 27 of the California Code of  
19 Regulations. Covered Products sold by J.C.S. Apparel Group up to and including one hundred and  
20 twenty (120) days after the Effective Date may sell through without a warning even if not  
21 Reformulated Products. Until 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 and birth defects or other reproductive harm."; or (b)(1) A  
24 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold  
25 black outline to the left of the word "warning" in bold all capital letters, followed by the  
26 statement "This product can expose you to chemicals including di(2-ethylhexyl)phthalate  
27 (DEHP), which is known to the State of California to cause cancer and birth defects or other  
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1 reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”; or (2) a  
2 warning consisting of a symbol that is a black exclamation point in a yellow equilateral  
3 triangle with a bold black outline to the left of the word “warning” in bold all capital letters,  
4 followed by the statement “Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”<sup>1</sup>  
5 For Covered Products manufactured on and after August 30, 2018, the warning set forth in § 3.1(b)  
6 shall be used.

7 3.2 The warning provided pursuant to § 3.1 shall be affixed to or printed on the Covered  
8 Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic  
9 process, providing that the warning is displayed with such conspicuousness, as compared with other  
10 words, statements, or designs as to render it likely to be read and understood by an ordinary  
11 individual under customary conditions of purchase or use. A warning may be contained in the same  
12 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,  
13 concerning the use of the Covered Product, or that provides other information about the Covered  
14 Product and shall be at least the same size as those other safety warnings.

15 **4. MONETARY TERMS**

16 4.1 **Civil Penalty.** J.C.S. Apparel Group shall pay a Civil Penalty of \$2,000.00 pursuant  
17 to Health and Safety Code § 25249.7(b), to be apportioned in accordance with California Health &  
18 Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of  
19 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty  
20 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within fourteen (14) days of the Effective Date, J.C.S. Apparel Group shall  
22 issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of  
23 \$1,500.00; and (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$500.00.  
24 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment  
25 address:  
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 Evan J. Smith, Esquire  
2 Brodsky & Smith, LLC  
3 Two Bala Plaza, Suite 510  
4 Bala Cynwyd, PA 19004

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

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

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

21 4.2 **Attorneys' Fees.** J.C.S. Apparel Group shall pay \$17,000.00 to Brodsky & Smith,  
22 LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's attorneys' fees and costs  
23 incurred as a result of investigating, bringing this matter to J.C.S. Apparel Group's attention,  
24 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,  
25 pursuant to Code of Civil Procedure § 1021.5.

26 4.2.1 J.C.S. Apparel Group shall pay the attorneys' fees identified in § 4.2 in two  
27 (2) equal installment payments. J.C.S. Apparel Group shall issue a check for the  
28 first installment payment of \$8,500.00 within fourteen (14) days of the Effective  
Date. J.C.S Apparel Group shall issue a check for the second and final installment  
payment of \$8,500.00 within forty-five (45) days of the Effective Date.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
acting on his own behalf, and on behalf of the public interest, and J.C.S. Apparel Group, and its

1 parents, 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, franchisees, marketplace hosts and cooperative members, including but not limited to  
7 Burlington Coat Factory Warehouse Corporation ("Downstream Releasees"), of all claims for  
8 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the  
9 Notice, with respect to any Covered Products manufactured, distributed, or sold by J.C.S. Apparel  
10 Group prior to the Effective Date or within 120 days after the Effective Date. This Consent  
11 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act  
12 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action  
13 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have  
14 been brought pursuant to the Notice against J.C.S. Apparel Group or its Downstream Releasees of  
15 the Product including but not limited to alleged violations of this Consent Judgment ("Proposition  
16 65 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with  
17 Proposition 65 with regard to the Covered Products.

18           5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
19 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
20 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
21 legal action and releases J.C.S. Apparel Group, Defendant Releasees, and Downstream Releasees  
22 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,  
23 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
24 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
25 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
26 from Covered Products manufactured, distributed, or sold by J.C.S. Apparel Group, Defendant  
27 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this  
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1 paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or  
2 in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,  
3 which provides as follows:  
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5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
7 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
8 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
9 OR HER SETTLEMENT WITH THE DEBTOR.

10 5.3 J.C.S. Apparel Group waives any and all claims against Ferreiro, his attorneys and  
11 other representatives, for any and all actions taken or statements made (or those that could have  
12 been taken or made) by Ferreiro and his attorneys and other representatives, whether in the course  
13 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
14 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-

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

3 For Defendant:

4 Ann Grimaldi  
5 Jennifer K. Singh  
6 Grimaldi Law Offices  
7 535 Mission Street  
14th Floor  
San Francisco, CA 94105

8 And

9 For Ferreiro:

10 Evan Smith  
11 Brodsky & Smith, LLC  
12 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES.**

16 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
18 the same document.

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

21 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
22 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
23 Defendant agrees it shall support approval of such Motion.

24 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
25 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
26 the Parties agree to meet and confer on how to proceed, and if such agreement is not reached within  
27 30 days, the case shall proceed on its normal course.



1           10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
4 its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6           11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **12. ATTORNEY'S FEES**

9           12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

11           12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
12 pursuant to law.

13 **13. RETENTION OF JURISDICTION**

14           13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
15 Consent Judgment.

16 **14. AUTHORIZATION**

17           14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
18 respective Parties and have read, understood and agree to all of the terms and conditions of this  
19 document and certify that he or she is fully authorized by the Party he or she represents to execute  
20 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
21 explicitly provided herein each Party is to bear its own fees and costs.  
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AGREED TO:

AGREED TO:

Date: 8/14/18

Date: July 1 2018

By: Anthony Ferreiro  
ANTHONY FERREIRO

By: [Signature]  
J.C.S. APPAREL GROUP, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 11/7/18

[Signature]  
Judge of Superior Court  
JO-LYNNE Q. LEE