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Attorneys for Plaintiff

FILED
ALAMEDA COUNTY

AUG 28 2019

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

HECTOR VELARDE, et al.,

Plaintiffs,

v.

ROSS STORES, INC.,

Defendant.

Case No: RG19011044

Paul
~~[PROPOSED]~~ CONSENT
JUDGMENT

Judge: Paul D. Herbert
Dept.: 20
Hearing Date: August 27, 2019
Hearing Time: 3:00 PM
Reservation #: R-2080371

Paul

Courtesy Copy
BY FAX COPY

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Hector Velarde (“Velarde”), Ema Bell (“Bell”), and Anthony Ferreiro (“Ferreiro”), collectively acting on behalf of the public interest (Velarde, Bell and Ferreiro are collectively referred to hereinafter as, the “Citizen Enforcers”) and Ross Stores, Inc. (“Ross Stores”) with Citizen Enforcers and Ross Stores collectively referred to as the “Parties” and each of them as a “Party.” Citizen Enforcers are individuals that reside in California, and that seek to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Ross 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.** Citizen Enforcers allege that Ross Stores has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of under-the-bed storage bags/organizers/cases without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notices of Violation/Complaint.** On or about March 19, 2018 (Velarde), March 20, 2018 (Bell), and July 26, 2018 (Ferreiro), the Citizen Enforcers each served Ross Stores, and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (collectively, the “Notices”), alleging that Ross Stores violated Proposition 65 for failing to warn consumers and customers that use of under-the-bed storage bags/organizers/cases exposes users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On March 15, 2019, Citizen Enforcers 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 Ross Stores 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

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claims which were or could have been raised in the Complaint based on the facts alleged therein and/or in the Notices.

1.5 Ross Stores denies the material allegations contained in the Notices and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Ross Stores of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Ross Stores of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Ross Stores. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Ross Stores under this Consent Judgment.

2. **DEFINITIONS**

2.1 **Covered Products.** The term "Covered Products" means under-the-bed shoe organizers, storage bags, and boot bags that are manufactured by Nignbo General Union Co., Ltd. with style numbers PRO020B-GRY, JY25031B-PURP, and GU1701-BLK/WHT that are distributed, sold, and/or offered for sale in California by Ross Stores.

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

3. **INJUNCTIVE RELIEF:**

3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing thereafter, Covered Products that Ross Stores directly imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.

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

1 3.3 **Clear and Reasonable Warning.** As of Effective Date, and continuing thereafter,
2 a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all
3 Covered Products that Ross Stores imports, distributes, sells, or offers for sale in California that is
4 not a Reformulated Product. There shall be no obligation for Ross Stores to provide a warning for
5 Covered Products that enter the stream of commerce prior to the Effective Date. The warning shall
6 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

7 (a) **Warning:**

8 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
9 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
10 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

11 (b) **Alternative Warning:**

12 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

13 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
14 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
15 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
16 triangle with a black outline, except that if the sign or label for the Covered Product does not use
17 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
18 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
19 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
20 automatic process, providing that the warning is displayed with such conspicuousness, as compared
21 with other words, statements, or designs as to render it likely to be read and understood by an
22 ordinary individual under customary conditions of purchase or use. A warning may be contained
23 in the same section of the packaging, labeling, or instruction booklet that states other safety
24 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
25 those other safety warnings.

26 3.5 **Compliance with Warning Regulations.** Ross Stores shall be deemed to be in
27 compliance with warning requirements set forth in §§ 3.3 and 3.4 of this Consent Judgment by
28 either adhering to §§ 3.3 and 3.4 of this Consent Judgment or by complying with warning

1 requirements adopted by the State of California's Office of Environmental Health Hazard
2 Assessment ("OEHHA") after the Effective Date.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Ross Stores shall pay \$3,000.00 as a Civil Penalty pursuant to Health
5 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
6 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
7 Civil Penalty remitted to Citizen Enforcers, as provided by California Health & Safety Code
8 § 25249.12(d).

9 4.1.1 Within ten (10) business days of the Effective Date, Ross Stores shall issue
10 four (4) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
11 \$2,250.00; to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$250.00; to (c)
12 "Brodsky & Smith, LLC in Trust for Bell" in the amount of \$250.00; and to (d) "Brodsky &
13 Smith, LLC in Trust for Velarde" in the amount of \$250.00. Payment owed to Citizen Enforcers
14 pursuant to this Section shall be delivered to the following payment address:

15 Evan J. Smith, Esquire
16 Brodsky & Smith, LLC
17 Two Bala Plaza, Suite 510
18 Bala Cynwyd, PA 19004

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

21 For United States Postal Service Delivery:
22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Non-United States Postal Service Delivery:
28 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

3 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Ross Stores
4 shall pay \$32,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
5 Citizen Enforcers' attorneys' fees and costs incurred as a result of investigating, bringing this matter
6 to Ross Stores' attention, litigating and negotiating and obtaining judicial approval of a settlement
7 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Citizen
10 Enforcers, each acting on their own behalf, and on behalf of the public interest, and Ross Stores,
11 and its parents, shareholders, members, directors, officers, managers, employees, representatives,
12 agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
13 and their predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom
14 they obtain and to whom they directly or indirectly distribute or sell Covered Products, including
15 but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,
16 licensees, retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims
17 for violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in
18 the Notices and Complaint, with respect to any Covered Products distributed, sold, or offered for
19 sale by Ross Stores prior to the Effective Date. This Consent Judgment shall have preclusive effect
20 such that no other person or entity, whether purporting to act in his, her, or its interests or the public
21 interest shall be permitted to pursue and/or take any action with respect to any violation of
22 Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the
23 Notices and Complaint against Ross Stores and/or the Downstream Releasees of the Covered
24 Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment
25 constitutes compliance with Proposition 65 with regard to the Covered Products.

26 5.2 In addition to the foregoing, Citizen Enforcers, each on their own behalf, and on
27 behalf of their past and current agents, representatives, attorneys, and successors and/or assignees,
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1 and not in their representative capacity, hereby waives all rights to institute or participate in, directly
2 or indirectly, any form of legal action and releases Ross Stores, Defendant Releasees, and
3 Downstream Releasees from any and all manner of actions, causes of action, claims, demands,
4 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,
5 losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law
6 or equity, fixed or contingent, now or in the future, with respect to any alleged violations of
7 Proposition 65 related to or arising from Covered Products distributed, offered for sale, or sold by
8 Ross Stores, Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers
9 and releases in this paragraph, Citizen Enforcers hereby specifically waive any and all rights and
10 benefits which they now have, or in the future may have, conferred by virtue of the provisions of §
11 1542 of the California Civil Code, which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
15 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
16 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
17 DEBTOR OR RELEASED PARTY.

16 5.3 Ross Stores waives any and all claims against Citizen Enforcers, their attorneys and
17 other representatives, for any and all actions taken or statements made by Citizen Enforcers and
18 their attorneys and other representatives, whether in the course of investigating claims or otherwise
19 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to Covered
20 Products.

21 **6. ENFORCEMENT**

22 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
23 hereto. A Party may enforce any of the terms and conditions of this Consent Judgment only after
24 that Party first provides 60 days' notice to the Party allegedly failing to comply with the terms and
25 conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an
26 open and good faith manner.

27 6.2 **Notice of Violation.** Prior to bringing any proceeding to enforce the terms of this
28 Agreement, Citizen Enforcers shall provide written notice ("NOV") to Ross that includes

1 information sufficient for Ross to be able to understand and correct the violation, including but not
2 limited to: (a) the name and SKU of the product, (b) specific dates when the product was sold in
3 California, (c) the store or other place at which the product was available for sale to consumers,
4 and (d) any other evidence or other support for the allegations in the notice, including all test data
5 obtained by Citizen Enforcers regarding the Covered Product.

6 **6.3 Notice of Election Response.** Within 30 days of receiving an NOV, Ross shall
7 serve a Notice of Election (“NOE”) either contesting or not contesting the NOV.

8 **6.3.1 Non-Contested NOV.** Citizen Enforcers shall take no further action
9 regarding the alleged violation if Ross serves a NOE that elects not to contest the NOV and meets
10 one of the following conditions:

11 (a) The Covered Product was shipped by Ross for sale in California
12 before the Effective Date, or

13 (b) Since receiving the NOV Ross has taken corrective action by either
14 (i) taking all steps necessary to bring the sale of the product into compliance under the terms
15 of this Agreement, or (ii) removing the Covered Products identified in the NOV from sale
16 in California, or (iii) refute the information provided in paragraph 6.2.

17 **6.3.2 Contested NOV.** If Ross serves a NOE electing to contest the NOV, the
18 provisions of this paragraph 6.3.2 shall apply.

19 (a) Ross may request that the sample(s) of Covered Products tested by
20 Citizen Enforcers be subject to confirmatory testing at an EPA-accredited laboratory.

21 (b) If the confirmatory testing establishes that the Covered Products do
22 not contain DEHP in excess of the levels allowed in Section 3.2, above, Citizen Enforcers
23 shall take no further action regarding the alleged violation. If the testing does not establish
24 compliance with Section 3.2, above, Ross may withdraw its NOE to contest the violation
25 and may serve a new NOE pursuant to Section 6.3.1.

26 (c) If Ross does not withdraw an NOE to contest the NOV or take action
27 under Section 6.3.1, above, the Parties shall meet and confer for a period of no less than 30
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days before Citizen Enforcers may take action seeking to enforce the terms of this Consent Judgment.

6.4 In any proceeding brought by either Party to enforce this Consent Judgment, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

7. INTEGRATION

7.1 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.

8. GOVERNING LAW

8.1 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 Ross Stores shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

9. NOTICES

9.1 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 Ross Stores:

Ross Stores, Inc.
Attn: Legal Department
5130 Hacienda Drive
Dublin, CA 94568

With copy to:

Jeff Margulies
Norton Rose Fulbright US LLP
555 South Flower Street

1 Forty-First Floor
2 Los Angeles, CA 90071

3 And

4 For Citizen Enforcers:

5 Evan Smith
6 Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

10 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and
12 the same document.

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

15 11.1 Citizen Enforcers agree to comply with the requirements set forth in California
16 Health & Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent
17 Judgment.

18 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
19 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
20 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
21 30 days, the case shall proceed on its normal course.

22 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
23 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
24 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
25 its normal course on the trial court's calendar.

26 **12. MODIFICATION**

27 12.1 This Consent Judgment may be modified only by further stipulation of the Parties
28 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

1 **13. ATTORNEY'S FEES**

2 13.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **14. RETENTION OF JURISDICTION**

7 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **15. AUTHORIZATION**

10 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15
16 **AGREED TO:**

AGREED TO:

17 Date: 7/11/2019

Date: _____

18 By: Anthony Ferreiro
19 ANTHONY FERREIRO

By: _____
EMA BELL

20
21
22 **AGREED TO:**

AGREED TO:

23
24 Date: 7/11/2019

Date: _____

25 By: Hector Velarde
26 HECTOR VELARDE

By: _____
ROSS STORES, INC.

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AGREED TO:

AGREED TO:

Date: _____

Date: 7/15/2019

By: _____
ANTHONY FERREIRO

By: 
EMMA BELL

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
HECTOR VELARDE

By: _____
ROSS STORES, INC.

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AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
ANTHONY FERREIRO

By: _____
EMA BELL

AGREED TO:

AGREED TO:

Date: _____

Date: 5/21/19

By: _____
HECTOR VELARDE

By: [Signature]
ROSS STORES, INC.

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IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 08/27/2019

Paul D. Herbert
Judge of Superior Court