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**FILED**  
**ALAMEDA COUNTY**  
**JUL 15 2020**  
CLERK OF THE SUPERIOR COURT  
By *Michelle Hawkins*  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

PRECILA BALABBO,  
Plaintiff,

v.

THE ORIGINAL CALIFORNIA CAR DUSTER  
COMPANY, INC.,  
Defendant.

Case No.: RG19007587

**CONSENT JUDGMENT**

Judge: Dennis Hayashi  
Dept.: 518  
Hearing Date: February 27, 2020  
Hearing Time: 2:30 PM  
Reservation #: R-2135665

1       **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Precila Balabbo  
3 acting on behalf of the public interest (hereinafter “Balabbo”) and The Original California Car  
4 Duster Company, Inc. (“The Original California Car Duster Company” or “Defendant”) with  
5 Balabbo and Defendant collectively referred to as the “Parties” and each of them as a “Party.”  
6 Balabbo is an individual residing in California that seeks to promote awareness of exposures to  
7 toxic chemicals and improve human health by reducing or eliminating hazardous substances  
8 contained in consumer products. The Original California Car Duster Company is alleged to be a  
9 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
10 §§ 25249.6 et seq.

11           **1.2 Allegations and Representations.** Balabbo alleges that Defendant has exposed  
12 individuals to diisononyl phthalate (DINP) from its sales of The Original California Car Dusters  
13 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is  
14 listed under Proposition 65 as a chemical known to the State of California to cause cancer.

15           **1.3 Notice of Violation/Complaint.** On or about March 30, 2018, Balabbo served The  
16 Original California Car Duster Company, and various public enforcement agencies with documents  
17 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the  
18 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and  
19 customers that use of The Original California Car Dusters exposes users in California to DINP. No  
20 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On  
21 February 2, 2019, Balabbo filed a complaint (the “Complaint”) in the matter; on March 27, 2019,  
22 Defendant filed an Answer.

23           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
25 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
26 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
27 claims which were or could have been raised in the Complaint based on the facts alleged therein  
28

1 and/or in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means The Original California  
11 Car Dusters that are manufactured, distributed and/or offered for sale in California by The Original  
12 California Car Duster Company.

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 **Reformulation of Covered Products.** As of the date this Consent Judgment is  
17 signed by both Parties, and continuing thereafter, Covered Products that The Original California  
18 Car Duster Company directly manufactures, imports, distributes, sells, or offers for sale in  
19 California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or (b) be labeled  
20 with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of  
21 this Consent Judgment, a "Reformulated Product" is a Covered Product that is in compliance with  
22 the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not  
23 apply to any Reformulated Product.

24 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products  
25 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of DINP when  
26 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and  
27  
28

8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

**3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

(a) **Warning.** The "Warning" shall consist of the statement:

**⚠ WARNING:** This product can expose you to chemicals including diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** The Original California Car Duster Company may, but is not required to, use the alternative short-form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

**⚠ WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "**WARNING:**". The warning shall be affixed to or printed on the Covered Products' packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety

1 warnings, if any, concerning the use of the Covered Products and shall be at least the same size as  
2 those other safety warnings.

3 If The Original California Car Duster Company sells Covered Products via an internet  
4 website to customers located in California, the warning requirements of this section shall be  
5 satisfied if the foregoing warning appears either: (a) on the same web page on which a Covered  
6 Product is displayed and/or described; (b) on the same page as the price for the Covered Product;  
7 or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout  
8 process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white  
9 equilateral triangle may appear adjacent to or immediately following the display, description, price,  
10 or checkout listing of the Covered Product, if the warning statement appears elsewhere on the same  
11 web page in a manner that clearly associates it with the product(s) to which the warning applies.

12 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
13 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
14 Judgment or by complying with warning requirements adopted by the State of California's Office  
15 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

16 **4. MONETARY TERMS**

17 **4.1** Pursuant to this Section, The Original California Car Duster Company has agreed  
18 to pay \$17,500.00 (the, "Settlement Sum"). Of the Settlement Sum, \$1,500.00 is to be paid as a  
19 civil penalty (the "Civil Penalty"), and \$16,000.00 is to be paid to Brodsky & Smith, LLC  
20 ("Brodsky Smith") as complete reimbursement for Balabbo's attorneys' fees and costs incurred as  
21 a result of investigating, bringing this matter to The Original California Car Duster Company's  
22 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
23 interest, pursuant to Code of Civil Procedure § 1021.5. Payment pursuant to this Section shall be  
24 as follows:

25 **4.1.1** Beginning December 15, 2019, and continuing thereafter, on the 15<sup>th</sup> of  
26 every month for the next eleven (11) months (i.e., December 15, 2019 through and including  
27 November 15, 2020), The Original California Car Duster Company shall pay \$1,416 (the "Monthly  
28

1 Payment"). On December 15, 2020, The Original California Car Company shall pay \$1,917,  
2 thereby completing the payments due pursuant to this Consent Decree.

3 4.1.2 Prior to the Effective Date, The Original California Car Duster Company  
4 shall remit the Monthly Payment to its counsel of record in this Action, Stephen T. Holzer  
5 ("Holzer") of the law firm Lewitt Hackman, to be held in escrow (the "Escrow Monies"). Within  
6 ten (10) days of the Effective Date, Holzer shall deliver the Escrow Monies to the following  
7 payment address:

8 Evan J. Smith, Esquire  
9 Brodsky & Smith, LLC  
10 Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

11 4.1.3 After the Effective Date, by or before the 15<sup>th</sup> of every month until all monies  
12 owed pursuant to this Section are paid in full, The Original California Car Duster Company shall  
13 deliver the Monthly Payment directly to Brodsky Smith at the following payment address:

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

17 4.2 **Civil Penalty.** The Original California Car Duster Company has agreed to pay a  
18 \$1,500.00 Civil Penalty as part of the \$17,500 payment due pursuant to this Consent Decree. The  
19 Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§  
20 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the  
21 Penalty remitted to Balabbo.

22 4.2.1 Within ten (10) days of receiving the Escrow Monies, Brodsky Smith shall  
23 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of  
24 \$1,125.00; and to (b) "Precila Balabbo" in the amount of \$375.00. Payment owed to OEHHA (EIN:  
25 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65  
26 Penalties") at one of the following address(es):

27 For United States Postal Service Delivery:

28 Mike Gyurics  
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

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

4.3 For all amounts due and owing pursuant to this Section that are not received within the payment times set forth herein, The Original California Car Duster Company shall pay a late payment fee equal to \$100/day to be delivered to Brodsky Smith at the payment address identified in § 4.1.3, herein.

**5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo acting on her own behalf, and on behalf of the public interest, and The Original California Car Duster Company, and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, 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 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members, including but not limited to Kmart Corp. ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by The Original California Car Duster Company prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other person or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against The Original California Car Duster Company and/or the Downstream Releasees of the Covered

1 Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment  
2 constitutes compliance with Proposition 65 with regard to the Covered Products.

3         5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current  
4 agents, representatives, attorneys, and successors and/or assignees, and not in her representative  
5 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
6 legal action and releases The Original California Car Duster Company, Defendant Releasees, and  
7 Downstream Releasees from any and all manner of actions, causes of action, claims, demands,  
8 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,  
9 losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law  
10 or equity, fixed or contingent, now or in the future, with respect to any alleged violations of  
11 Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by  
12 The Original California Car Duster Company, Defendant Releasees or Downstream Releasees.  
13 With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby specifically  
14 waives any and all rights and benefits which she now has, or in the future may have, conferred by  
15 virtue of the provisions of § 1542 of the California Civil Code, which provides as follows:

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

22         5.3 The Original California Car Duster Company waives any and all claims against  
23 Balabbo, her attorneys and other representatives, for any and all actions taken or statements made  
24 (or those that could have been taken or made) by Balabbo and her attorneys and other  
25 representatives, whether in the course of investigating claims or otherwise seeking enforcement of  
26 Proposition 65 against it in this matter, and/or with respect to Covered Products.

## 27 6. INTEGRATION

28         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:

Stephen T. Holzer  
Lewitt, Hackman, Shapiro, Marshall & Harlan  
16633 Ventura Boulevard, 11<sup>th</sup> Floor  
Encino, CA 91436 – 1865

And

For Balabbo:

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

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

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

3           10.1    Balabbo agrees to comply with the requirements set forth in California Health &  
4       Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
5       Defendant agrees it shall support approval of such Motion.

6           10.2    This Consent Judgment shall not be effective until it is approved and entered by the  
7       Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
8       the Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
9       30 days, the case shall proceed on its normal course.

10          10.3    If the Court approves this Consent Judgment and is reversed or vacated by an  
11       appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
12       Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
13       its normal course on the trial court's calendar.

14       **11.    MODIFICATION**

15           11.1    This Consent Judgment may be modified only by further stipulation of the Parties  
16       and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17       **12.    ATTORNEY'S FEES**

18           12.1    A Party who unsuccessfully brings or contests an action arising out of this Consent  
19       Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20           12.2    Nothing in this Section shall preclude a Party from seeking an award of sanctions  
21       pursuant to law.

22       **13.    RETENTION OF JURISDICTION**

23           13.1    This Court shall retain jurisdiction of this matter to implement or modify the  
24       Consent Judgment.

25       **14.    AUTHORIZATION**

26           14.1    The undersigned are authorized to execute this Consent Judgment on behalf of their  
27       respective Parties and have read, understood and agree to all of the terms and conditions of this  
28

1 document and certify that he or she is fully authorized by the Party he or she represents to execute  
2 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
3 explicitly provided herein each Party is to bear its own fees and costs.  
4

5 **AGREED TO:**

6 Date: 11/15/2019

7 By:   
8 PRECILA BALABBO

9 **AGREED TO:**

10 Date: 11-14-19

11 By:   
12 THE ORIGINAL CALIFORNIA CAR  
13 DUSTER COMPANY, INC.

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

15 Dated: 7/15/20

16   
17 Judge of Superior Court