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Attorneys for Plaintiff

FILED
ALAMEDA COUNTY

MAR 26 2019

CLERK OF THE SUPERIOR COURT
By *Kate Clarke*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

PRECILA BALABBO,

Plaintiff,

v.

TRIPLE-T DESIGNS, INC.,

Defendant.

Case No.: RG18926215
~~PROPOSED~~ CONSENT
JUDGMENT

Judge: Stephen Pulido
Dept.: 517
Hearing Date: March 26, 2019
Hearing Time: 3:00 PM
Reservation #: R-2030543

1 **1. INTRODUCTION**

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

10 **1.2 Allegations and Representations.** Balabbo alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Totally Tiffany bags/cases/totes
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is
13 listed under Proposition 65 as a chemical known to the State of California to cause cancer and
14 reproductive toxicity.

15 **1.3 Notice of Violation/Complaint.** On or about June 4, 2018, Balabbo served Triple-
16 T, and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of Totally Tiffany
19 bags/cases/totes expose users in California to DEHP. No public enforcer has brought and is
20 diligently prosecuting the claims alleged in the Notice. On October 26, 2018, Balabbo 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 and final 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.

1 1.5 Defendant denies the material allegations contained in Balabbo'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 Totally Tiffany
10 bags/cases/totes that are manufactured, distributed and/or offered for sale in California by Triple-
11 T.

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

14 **3. INJUNCTIVE RELIEF**

15 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
16 thereafter, Covered Products that Triple-T directly manufactures, imports, distributes, sells, or
17 offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or
18 (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
19 purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in
20 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
21 and 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
24 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
25 and 8270C or other methodology utilized by federal or state government agencies for the purpose
26 of determining the phthalate content in a solid substance. Defendant may rely upon its suppliers'
27 test results in order to determine whether the Covered Products are Reformulated Products.
28

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

8 (a) **Warning.** The “Warning” shall consist of the statement:

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

12 (b) **Alternative Warning:** Triple-T may, but is not required to, use the alternative short-
13 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

15 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word “**WARNING.**” The warning shall be affixed to or printed on the
21 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
22 automatic process, providing that the warning is displayed with such conspicuousness, as compared
23 with other words, statements, or designs as to render it likely to be read and understood by an
24 ordinary individual under customary conditions of purchase or use. A warning may be contained
25 in the same section of the packaging, labeling, or instruction booklet that states other safety
26 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
27
28

1 those other safety warnings. For internet sales, the warning must be provided in a manner consistent
2 with Title 27, California Code of Regulations section 25602(b).

3 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
4 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
5 Judgment or by complying with the warning regulations adopted by the State of California's Office
6 of Environmental Health Hazard Assessment ("OEHHA").

7 **4. MONETARY TERMS**

8 **4.1 Civil Penalty.** Triple-T shall pay \$2,000.00 as a Civil Penalty pursuant to Health
9 and Safety Code § 25249.7(b), to be apportioned in accordance with California Health & Safety
10 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
11 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

12 4.1.1 Within ten (10) business days of the Effective Date, Triple-T shall issue
13 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;
14 and to (b) "Brodsky & Smith, LLC in Trust for Balabbo" in the amount of \$500.00. Payment
15 owed to Balabbo pursuant to this Section shall be delivered to the following payment address:

16 Evan J. Smith, Esquire
17 Brodsky & Smith, LLC
18 Two Bala Plaza, Suite 510
19 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

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment

1 1001 I Street
2 Sacramento, CA 95814

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

5 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Triple-T shall
6 pay \$16,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
7 Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
8 Triple-T' attention, litigating and negotiating and obtaining judicial approval of a settlement in the
9 public interest, pursuant to Code of Civil Procedure § 1021.5.

10 5. **RELEASE OF ALL CLAIMS**

11 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
12 acting on her own behalf, and on behalf of the public interest, and Triple-T, and its parents,
13 shareholders, members, directors, officers, managers, employees, representatives, agents,
14 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
15 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
16 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
17 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
18 retailers, franchisees, and cooperative members, including but not limited to Jo-Ann Stores, LLC
19 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
20 DEHP from Covered Products as set forth in the Notice and Complaint, with respect to any Covered
21 Products manufactured, distributed, or sold by Triple-T prior to the Effective Date. This Consent
22 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
23 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
24 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
25 been brought pursuant to the Notice against Triple-T, Defendant Releasees, and/or the Downstream
26 Releasees of the Covered Products ("Proposition 65 Claims"). Compliance with the terms of this
27 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.
28

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

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
15 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
16 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
17 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
18 OR HER SETTLEMENT WITH THE DEBTOR.

19 5.3 Triple-T waives any and all claims against Balabbo, her attorneys, and other
20 representatives, for any and all actions taken or statements made (or those that could have been
21 taken or made) by Balabbo, her attorneys, and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and/or with respect to Covered Products.

24 **6. INTEGRATION**

25 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
26 any and all prior negotiations and understandings related hereto shall be deemed to have been
27 merged within it. No representations or terms of agreement other than those contained herein exist
28 or have been made by any Party with respect to the other Party or the subject matter hereof.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 Tiffany Spaulding
14 Triple-T Designs, Inc.
15 4037 S. Union Avenue
 Tacoma, WA 98409

16 And

17 For Balabbo:

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

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 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 thirty (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 defends 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 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 **14. AUTHORIZATION**

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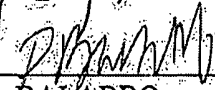
1 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
2 explicitly provided herein each Party is to bear its own fees and costs.

3
4 **AGREED TO:**

AGREED TO:

5 Date: 12/8/18

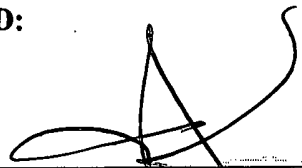
Date: 11-19-2018

6 By: 
7 **PRECILA BALABBO**

By: 
TRIPLE-T DESIGNS, INC.

8
9 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

10
11 Dated: 3-26-2019



Judge of Superior Court

Stephen Pulido