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Attorneys for Plaintiff Ecological Alliance, LLC

FILED
Superior Court of California
County of Los Angeles

09/03/2019

Sherril R. Carter, Executive Officer / Clerk of Court
By: Marisa Ventura Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

NEWELL BRANDS INC., a Delaware
corporation,

Defendant.

Case No.: 19STCV28078

~~PROPOSED~~ STIPULATED
CONSENT JUDGMENT

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Newell Brands Inc.
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as
4 follows:

5 WHEREAS: On or about January 14, 2019, Plaintiff, through Plaintiff’s counsel, served a
6 60 Day Notice to Defendants, Home Depot U.S.A., Inc., Newell Brands Inc., the California
7 Attorney General, the District Attorneys of every County in the State of California, and the City
8 Attorneys for every City in the State of California with a population greater than 750,000
9 (collectively, “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking
10 Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq.,
11 and its implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file
12 an enforcement action in the public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed scrubs or
14 brooms of varying sizes and configurations including scrubs bearing UPC #071798902661
15 (collectively the “Covered Products”) that were sold or distributed for sale in California and
16 further alleges that those Covered Products expose consumers in the State of California to
17 chemicals including Di(2-ethylhexy)phthalate [DEHP], which are listed by the State of California
18 pursuant to California Health and Safety Code § 25249.8; and

19 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
20 to DEHP in Covered Products without being provided the Proposition 65 warning set out at
21 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65
22 Warning”);

23 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
24 violated Proposition 65, that any of its products created an exposure and expressly denies that it
25 has engaged in any wrongdoing whatsoever,

26 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
27 believes that this objective is achieved by the actions described in this Consent Judgment; and

28 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
and expense of litigation.

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2 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
3 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:
4

5 INTRODUCTION

6 1.1. On January 14, 2019, Plaintiff served the 60-Day Notice upon Defendant and on
7 Public Prosecutors. No Public Prosecutors commenced an enforcement action. No
8 Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file
9 its Complaint against Defendant in the present action.

10 1.2. Defendant employs ten (10) or more persons.

11 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
12 "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation
13 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
14 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
15 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
16 claims which were or could have been raised in the Complaint based on the facts alleged
17 therein with respect to the Covered Products, and of all claims which were or could have
18 been raised by any person or entity based in whole or in part, directly or indirectly, on the
19 facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related
20 thereto, with respect to Covered Products, including any Proposition 65 claim arising out
21 of an alleged exposure to Covered Products (collectively, "Proposition 65 Claims").

22 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
23 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
24 resolving the issues raised therein both as to past and future conduct. By execution of
25 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
26 any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with
27 the Consent Judgment constitute or be construed as an admission by Defendant of any
28 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and

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2 legal allegations in the 60-Day Notice and the Complaint and expressly denies any
3 wrongdoing whatsoever.

4 **2. DEFINITIONS**

5 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the
6 Consent Judgment has been approved and entered by the Court.

7 **3. INJUNCTIVE RELIEF**

8 3.1. For each Covered Product, Defendant agrees to undertake, or cause to be
9 undertaken on its behalf, either (a) reformulation of the Covered Product to bring it
10 within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a
11 warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will
12 constitute compliance by Defendant with all requirements of Proposition 65 relating to
13 DEHP exposure in the Covered Products:

14 3.2. Proposition 65 Exemption for the Covered Products

15 Subject to Section 3.5, any Covered Product that is sold, or offered for sale, to consumers
16 in the State of California after the Effective Date shall be deemed to comply with
17 Proposition 65, and be exempt from any Proposition 65 warning requirements with respect
18 to DEHP, if no "Accessible Component Part" of such Covered Product contains more than
19 0.1 percent (1,000 parts per million) of DEHP. For purposes of this Consent Judgment,
20 "Accessible Component Part" shall mean components of the Covered Products to which a
21 person would be exposed to DEHP by direct contact during normal use of the Covered
22 Product.

23 3.3. Warning Option

24 Subject to section 3.5, Covered Products that do not meet the warning exemption standard
25 set forth in Section 3.2 above, shall be accompanied by a warning as described in Section
26 3.4 below. This warning requirement shall only be required as to Covered Products that
27 are manufactured, distributed, marketed, sold or shipped for sale to consumers by
28 Defendant in the State of California, after the Effective Date. No Proposition 65 warning
shall be required as to any Covered Products that are already in the stream of commerce as

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2 of the Effective Date, and all such Covered Products are hereby deemed to be exempt
3 from Proposition 65 with respect to DEHP.

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5 3.4. Warning Language

6 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
7 the following warning statements on or within the unit packaging of the Covered
8 Products, or affixed to the Covered Products, displayed in a reasonably conspicuous
9 manner:

10 (1) **WARNING:** This product can expose you to DEHP, which is
11 known to the State of California to cause cancer, birth defects or
12 other reproductive harm. For more info go to
13 www.P65Warnings.ca.gov.

14 (2) **WARNING:** Cancer and Reproductive Harm –
15 www.P65Warnings.ca.gov.

16 If Defendant elects to use the warning statements identified in either (1) or (2)
17 above, it may also include a symbol consisting of a black exclamation point in a
18 yellow equilateral triangle with a bold black outline. Where the sign, label or shelf
19 tag for the product is not printed using the color yellow, the symbol may be printed
20 in black and white. The symbol shall be placed to the left of the text of the
21 warning, in a size no smaller than the height of the word “WARNING”.

22 3.5. 90-Day Grace Period

23 Although Defendant shall be deemed in compliance on the Effective Date, Defendant
24 shall have a ninety (90)-day grace period from the Effective Date to complete the
25 reformulation or warning steps provided in Sections 3.1 – 3.4.

26 **4. MONETARY RELIEF**

27 4.1. Within ten (10) days of the date the Effective Date, Defendant shall pay the total
28 sum of \$37,000 which includes \$7,000 in civil penalties and \$30,000 in payment of
Plaintiff's costs and reasonable attorney's fees. The \$7,000 civil penalty shall be

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2 apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or
3 \$5,250, paid to the State of California's Office of Environmental Health Hazard
4 Assessment and 25%, or \$1,750, payable to Plaintiff.

5 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
6 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
7 portions due to the State of California Office of Environmental Health Hazard
8 Assessment and to Plaintiff. Defendant shall have no liability with respect to the
9 distribution of funds once payment has been made to Plaintiffs' counsel.

10 Bank: Bank of America, N.A.

11 Routing Transit No.: 026009593

12 Account No.: 325054144600

13 Beneficiary: Custodio & Dubey LLP

14 **5. CLAIMS COVERED AND RELEASE**

15 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
16 behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's
17 parent companies, as well as all of Defendant's officers, directors, members,
18 shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions,
19 affiliates, suppliers, franchisees, licensees, and retailers, their parent and all subsidiaries,
20 and affiliates, thereof, their respective employees, agents and assigns, as well as all other
21 upstream and downstream entities in the distribution chain for any of the Covered
22 Products, and the predecessors, successors, and assigns of any of them, including but not
23 limited to Home Depot U.S.A., Inc. (collectively, the "Released Parties"), for any alleged
24 violation of Proposition 65, and its implementing regulations, for failure to provide
25 Proposition 65 warnings for the Covered Products with respect to DEHP, and fully
26 resolves all claims that have been brought, or which could have been brought in this
27 action up to and including the Effective Date. Plaintiff on behalf of itself, and in the
28 public interest, hereby discharges the Released Parties from any and all claims, actions,
causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses

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asserted, or that could have been asserted, with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings about exposures to DEHP for any or all of the Covered Products, through and including the Effective Date.

5.2. It is possible that other claims not known to the Parties arising out of the facts contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims through and including the Effective Date, including all rights of action thereon. Plaintiff and Defendant acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown claims, and nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542 which reads as follows:

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

5.3. Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim for those damages against any of the Released Parties.

5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposure to DEHP in the Covered Products as set forth in the 60 Day Notice and/or the Complaint.

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6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)

6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

7. PROVISION OF NOTICE

7.1. When any Party is entitled to receive any notice or writing under this Consent Judgment, the notice or writing shall be sent by first class certified mail with return receipt requested, or by electronic mail, as follows:

To Defendant:
Elizabeth V. McNulty, Esq.
TAYLOR | ANDERSON LLP
2 Park Plaza, Suite 200
Irvine, CA 92614
emcnulty@talawfirm.com

To Plaintiff:
Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Ste 615
Los Angeles, CA 90013
dubey@cd-lawyers.com

7.2. Any party may modify the person and address to whom the notice is to be sent by sending the other Party notice that is transmitted in the manner set forth in section 7.1.

8. COURT APPROVAL

8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall support. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

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10. ENTIRE AGREEMENT

10.1. This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

10.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

10.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

10.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby, and approved and ordered by the Court.

10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. RETENTION OF JURISDICTION

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

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

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13. EXECUTION IN COUNTERPARTS

13.1. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute the same document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the original.

14. AUTHORIZATION

14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

15. SEVERABILITY

15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect.

AGREED TO:

Ecological Alliance LLC

Date: Aug 16, 2019

By: [Signature]

Harmony Welsh, Managing Member

AGREED TO:


Newell Brands Inc.

Date: 8/16/2019

By: [Signature]

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: 09/03/2019

 **Terry Green**
Terry Green / Judge
JUDGE OF THE SUPERIOR COURT