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**FILED**  
**ALAMEDA COUNTY**

MAR 04 2020

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

~~ENDORSED  
FILED  
ALAMEDA COUNTY~~

~~DEC 24 2019~~

~~Roni Gill  
Deputy~~

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 JORDACHE ENTERPRISES, INC.,

15 Defendant.

Case No.: RG19041072

**CONSENT JUDGMENT**

Judge: Ronni B. MacLaren

Dept.: 25

Hearing Date: February 14, 2020

Hearing Time: 9:00 AM

Reservation #: R-2145082

Filed By Fax

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 Jordache jeans, UPC #  
10 786658850753, Style # 506309984 that are manufactured, distributed and/or offered for sale in  
11 California by Jordache Enterprises.

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; WARNINGS**

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

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

1           3.3    **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
3 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,  
4 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There  
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream  
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall  
7 consist of either the **Warning** or **Alternative Warning** 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-  
10 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
11 cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

14           ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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 those other safety warnings.

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

10 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
11 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
12 Judgment or by complying with warning requirements adopted by the State of California's Office  
13 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

14 **4. MONETARY TERMS**

15 4.1 **Civil Penalty.** Jordache Enterprises shall pay \$1,500.00 as a Civil Penalty pursuant  
16 to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California  
17 Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining  
18 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
19 § 25249.12(d).

20 4.1.1 Within ten (10) days of the Effective Date, Jordache Enterprises shall issue  
21 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00;  
22 and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$375.00. Payment  
23 owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

24 Evan J. Smith, Esquire  
25 Brodsky & Smith, LLC  
26 Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

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

1 For United States Postal Service Delivery:

2 Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 P.O. Box 4010  
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics  
9 Fiscal Operations Branch Chief  
10 Office of Environmental Health Hazard Assessment  
11 1001 I Street  
12 Sacramento, CA 95814

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

15 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Jordache Enterprises  
16 shall pay \$16,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for  
17 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to  
18 Jordache Enterprises's attention, litigating and negotiating and obtaining judicial approval of a  
19 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

20 **5. RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
22 acting on his own behalf, and on behalf of the public interest, and Jordache Enterprises, and its  
23 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,  
24 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
25 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
26 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
27 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
28 retailers, franchisees, and cooperative members, including but not limited to Barney's, Inc. 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 ("Downstream Releasees"), of all claims for violations of

1 Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with  
2 respect to any Covered Products manufactured, distributed, or sold by Jordache Enterprises prior  
3 to the Effective Date. This Consent Judgment shall have preclusive effect such that no other person  
4 or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted  
5 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
6 the Complaint, or that could have been brought pursuant to the Notice against Jordache Enterprises  
7 and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims"). Compliance  
8 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to  
9 the Covered Products.

10 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
11 agents, representatives, attorneys, and successors and/or assignees, and not in his representative  
12 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
13 legal action and releases Jordache Enterprises, Defendant Releasees, and Downstream Releasees  
14 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,  
15 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
16 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
17 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
18 from Covered Products manufactured, distributed, or sold by Jordache Enterprises, Defendant  
19 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this  
20 paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or  
21 in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,  
22 which provides as follows:

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

27 5.3 Jordache Enterprises waives any and all claims against Ferreiro, his attorneys and  
28 other representatives, for any and all actions taken or statements made (or those that could have

1 been taken or made) by Ferreiro and his attorneys and other representatives, whether in the course  
2 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter.  
3 and/or with respect to Covered Products.

4 **6. INTEGRATION**

5 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
6 any and all prior negotiations and understandings related hereto shall be deemed to have been  
7 merged within it. No representations or terms of agreement other than those contained herein exist  
8 or have been made by any Party with respect to the other Party or the subject matter hereof.

9 **7. GOVERNING LAW**

10 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
11 California and apply within the State of California. In the event that Proposition 65 is repealed or  
12 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
13 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
14 to the extent that, Covered Products are so affected.

15 **8. NOTICES**

16 8.1 Unless specified herein, all correspondence and notices required to be provided  
17 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
18 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
19 by the other party at the following addresses:

20 For Defendant:

21 James G. Scadden  
22 Gordon Rees Scully Mansukhani  
23 1111 Broadway, Suite 1700  
Oakland, CA 94607

24 And

25 For Ferreiro:

26 Evan Smith  
27 Brodsky & Smith, LLC  
28 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

4 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
5 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
6 the same document.

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

9 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
10 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
11 Defendant agrees it shall support approval of such Motion.

12 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
13 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
14 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
15 days, the case shall proceed on its normal course.

16 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
18 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
19 its normal course on the trial court's calendar.

20 **11. MODIFICATION**

21 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
22 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

23 **12. ATTORNEY'S FEES**

24 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
25 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

26 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
27 pursuant to law.  
28



13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date:

12/23/19

Date:

12/17/19

By:

Anthony Ferreiro  
ANTHONY FERREIRO

By:

JORDACHE ENTERPRISES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

3/4/20

Judge of Superior Court