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FILED
 ALAMEDA COUNTY
 MAY 5 2021
 CLERK OF THE SUPERIOR COURT
 By _____ Deputy

MAR 04 2021

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 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 HOUSE OF DOOLITTLE, LTD.,

15 Defendant.

Case No.: RG21088145

CONSENT JUDGMENT

Judge: Paul Herbert

Dept.: 20

Hearing Date: April 23, 2021

Hearing Time: 9:00 AM

Reservation Number: R-2239465

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 19 FILED
 20 ALAMEDA COUNTY

21 MAY 5 2021

22 CLERK OF THE SUPERIOR COURT
 23 By _____ Deputy

Filed by Fax

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro") and House of Doolittle, Ltd. ("House of Doolittle" or "Defendant") with Ferreiro and Defendant collectively referred to as the "Parties" and each of them as a "Party." Ferreiro is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. House of Doolittle 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.** Ferreiro alleges that Defendant has exposed individuals to diisononyl phthalate (DINP) from its sales of House of Doolittle desk calendars without providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notice of Violation/Complaint.** On or about October 13, 2020, Ferreiro served House of Doolittle, and various public enforcement agencies with documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of House of Doolittle's calendars exposes users in California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On January 20, 2021, Ferreiro 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 Defendant 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 claims which were or could have been raised in the Complaint based on the facts alleged therein and/or in the Notice.

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 House of Doolittle desk
10 calendars that are manufactured, imported, distributed, sold and/or offered for sale in California by
11 House of Doolittle.

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 House of Doolittle directly
17 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 DINP
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 manufactures,
4 imports, distributes, sells, or offers for sale in California that are not Reformulated Products. 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 diisononyl
10 phthalate (DINP), which is known to the State of California to cause cancer. For
11 more information go to www.P65Warnings.ca.gov.

12 (b) **Alternative Warning:** House of Doolittle 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 - 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.
28

1 If House of Doolittle sells Covered Products via an internet website to customers located in
2 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 **3.6 Modifications to Warning Statements.** If modifications or amendments to
15 Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning
16 specifications different from, the specifications in this Consent Judgment, House of Doolittle may
17 modify the content and delivery methods of its warnings to conform to the modified or amended
18 provisions of Proposition 65 or its regulations.

19 **4. MONETARY TERMS**

20 **4.1 Civil Penalty.** House of Doolittle shall pay \$2,000.00 as a Civil Penalty pursuant to
21 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
22 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
23 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
24 § 25249.12(d).

25 **4.1.1** Within ten (10) business days of the Effective Date, House of Doolittle
26 shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
27 \$1,500.00; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00.
28

1 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
2 address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith, LLC
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

23 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, House of
24 Doolittle shall pay \$23,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete
25 reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing
26 this matter to House of Doolittle attention, litigating and negotiating and obtaining judicial approval
27 of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
acting on his own behalf, and on behalf of the public interest, and House of Doolittle, and its
parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their

1 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
2 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
3 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
4 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
5 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
6 Notice, with respect to any Covered Products manufactured, imported, distributed, sold and/or
7 offered for sale by House of Doolittle prior to the Effective Date. It is the Parties' intention that this
8 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
9 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
10 pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the
11 Complaint, or that could have been brought pursuant to the Notice against House of Doolittle and/or
12 the Downstream Releasees of the Covered Products ("Proposition 65 Claims"). Compliance with
13 the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the
14 Covered Products.

15 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
16 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action and releases House of Doolittle, Defendant Releasees, and Downstream Releasees from
19 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
20 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
21 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
22 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
23 from Covered Products manufactured, imported, distributed, sold and/or offered for sale by House
24 of Doolittle, Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers
25 and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits
26 which he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the
27 California Civil Code, which provides as follows:
28

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

7 5.3 House of Doolittle waives any and all claims against Ferreiro, his attorneys and other
8 representatives, for any and all actions taken or statements made (or those that could have been
9 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
11 and/or with respect to Covered Products.

12 **6. INTEGRATION**

13 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
14 any and all prior negotiations and understandings related hereto shall be deemed to have been
15 merged within it. No representations or terms of agreement other than those contained herein exist
16 or have been made by any Party with respect to the other Party or the subject matter hereof.

17 **7. GOVERNING LAW**

18 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California and apply within the State of California. In the event that Proposition 65 is repealed or
20 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
21 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
22 to the extent that, Covered Products are so affected.

23 **8. NOTICES**

24 8.1 Unless specified herein, all correspondence and notices required to be provided
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
26 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
27 by the other party at the following addresses:

28 For Defendant:

Andrew W. Holstine
Schoenberg Finkel Beederman Bell Glazer LLC
300 S. Wacker Drive, Suite 1500

1 Chicago, Illinois 60606

2 For Ferreiro:

3 Evan Smith
4 Brodsky & Smith, LLC
5 9595 Wilshire Blvd., Ste. 900
6 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 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 9.1 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 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
14 **APPROVAL**

15 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
16 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
17 Defendant agrees it shall support approval of such Motion.

18 10.2 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, the
20 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
21 days, the case shall proceed on its normal course.

22 10.3 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 **11. MODIFICATION**

27 11.1 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.

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12. ATTORNEY'S FEES

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

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

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:

3/4/2021

Date:

2-15-2021

By:

Anthony Ferreiro
ANTHONY FERREIRO

By:

[Signature]
HOUSE OF DOOLITTLE, LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

05/05/2021

Paul D. Hubert
Judge of Superior Court