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FILED
Superior Court of California
County of Alameda
05/10/2022

Clerk of the Court / Executive Officer / Clerk of the Court

By: *M. Walker* Deputy
M. Walker

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 CVS PHARMACY, INC., et al.,

15 Defendant.

Case No.: RG20068754

CONSENT JUDGMENT

Judge: Jeffrey Brand

Dept.: 22

Hearing Date: 4/26/22

Hearing Time: 2:30 PM

Reservation #: 077881768244

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Microlife USA, Inc.
4 (“Microlife” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties”
5 and each of them as a “Party.” Ferreiro 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. Microlife 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.** Ferreiro alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from blood pressure monitors without providing
12 a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under
13 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive
14 toxicity.

15 **1.1 Notices of Violation/Complaint.** On or about February 22, 2021, Ferreiro served
16 Microlife and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “February 22 Notice”), alleging that
18 Defendant violated Proposition 65 for failing to warn consumers and customers that use of CVS
19 Health blood pressure monitors expose users in California to DEHP. No public enforcer has brought
20 and is diligently prosecuting the claims alleged in the Notice. On July 24, 2020, Ferreiro filed a
21 complaint (the “Complaint”) in the matter. On September 28, 2021, Ferreiro filed an amended
22 complaint in the matter to include Microlife to the action. on December 3, 2021, Plaintiff served
23 Microlife and various public enforcement agencies with documents entitled “60-Day Notice of
24 Violation” pursuant to Health & Safety Code §25249.7(d) (the “December 3 Notice”) regarding
25 alleged Proposition 65 notice violations related to all blood pressure monitors manufactured or
26 distributed by Microlife. On XXXX, Plaintiff filed a third amended complaint (the “TAC”), based
27 on the allegations in the December 3 notice. The Complaint, amended complaint, and the TAC are
28

collectively referred to herein as, the “Action.”

1.2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Action 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 Action based on the facts alleged therein and/or in the Notice.

1.3 Defendant denies the material allegations contained in Ferreiro’s Notice and Action and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant, any Defendant Releasee (as defined below), or any Downstream Releasee (as defined below) of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant, any Defendant Releasee, or any Downstream Releasee of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

2. DEFINITIONS

2.1 **Covered Products.** The term “Covered Products” means blood pressure monitors that are manufactured, distributed and/or offered for sale in California by Microlife.

2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is entered as a Judgment of the Court.

3. INJUNCTIVE RELIEF: WARNINGS


3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing thereafter, Covered Products that Microlife directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that is in

1 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
2 and 3.4 shall not apply to any Reformulated Product.

3 **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products
4 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
5 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
6 and 8270C or other methodology utilized by federal or state government agencies for the purpose
7 of determining the phthalate content in a solid substance.

8 **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
9 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
10 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufactures,
11 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
12 shall be no obligation for Defendant to provide a warning for Covered Products that Microlife has
13 distributed or sold prior to the Effective Date. The warning required by Section 3.1 required for
14 Covered Products that are not Reformulated Products shall consist of either the **Warning** or
15 **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

23 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
24 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
25 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
26 triangle with a black outline, except that if the sign or label for the Covered Product does not use
27 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
28 than the height of the word “**WARNING:**”. The warning or alternative warning shall be affixed to

1 or printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or
2 electronic device or automatic process, providing that the warning is displayed with such
3 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
4 read and understood by an ordinary individual under customary conditions of purchase or use. A
5 warning or alternative warning may be contained in the same section of the packaging, labeling, or
6 instruction booklet that states other safety warnings, if any, concerning the use of the Covered
7 Product and shall be at least the same size as those other safety warnings.

8 If Microlife sells Covered Products via an internet website to customers located in
9 California, the warning requirements of this section shall be satisfied by including either the
10 warning or a clearly marked hyperlink using the word "WARNING" on the product display page,
11 or by otherwise prominently displaying the warning to the purchaser prior to completing the
12 purchase.

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

17 **4. MONETARY TERMS**

18 4.1 **Civil Penalty.** Microlife shall pay \$5,000.00 as a Civil Penalty pursuant to Health
19 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
20 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
21 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

22 4.1.1 Within ten (10) days of the Effective Date, Microlife shall issue two
23 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,750.00; and
24 to (b) "Brodsky & Smith in Trust for Ferreiro" in the amount of \$1,250.00. Payment owed to
25 Ferreiro pursuant to this Section shall be delivered to the following payment address:

26 Evan J. Smith, Esquire
27 Brodsky & Smith
28 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 A copy of the check payable to OEHHHA shall be mailed to Brodsky & Smith at the address set
16 forth above as proof of payment to OEHHHA.

17 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Microlife shall pay
18 \$45,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Ferreiro's
19 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Microlife
20 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
21 interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
24 acting on his own behalf, and on behalf of the public interest, and Microlife, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
28 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
including but not limited to CVS Pharmacy, Inc. and its affiliates, their retailers, franchisees, and
cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65

1 based on exposure to DEHP from Covered Products as set forth in the Notice, with respect to any
2 Covered Products manufactured, distributed, or sold by Microlife prior to the Effective Date. It is
3 the Parties' intention that this Consent Judgment shall have preclusive effect such that no other
4 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
5 interest shall be permitted to pursue and/or take any action with respect to any violation of
6 Proposition 65 that was alleged in the Action, or that could have been brought pursuant to the
7 Notice against Microlife and/or the Downstream Releasees of the Covered Products ("Proposition
8 65 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
9 Proposition 65 with regard to 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 Microlife, Defendant Releasees, and Downstream Releasees from any and
14 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
15 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
16 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
17 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
18 Products manufactured, distributed, or sold by Microlife, Defendant Releasees or Downstream
19 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
20 specifically waives any and all rights and benefits which he now has, or in the future may have,
21 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
22 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 Microlife waives any and all claims against Ferreiro, his attorneys and other
28 representatives, for any and all actions taken or statements made (or those that could have been

1 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
2 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 Mark Porter
22 Microlife USA, Inc.
23 13820 Business Center Dr., Suite A
Lake Forest, IL 60045-1184

24 Jeffrey Brian Margulies
25 Norton Rose Fulbright US LLP
26 555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071

27 And

28 For Ferreiro:

1 Evan Smith
2 Brodsky & Smith
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and
10 the same document.

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

13 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
14 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
15 Defendant agrees it shall support approval of such Motion.

16 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
17 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
18 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
19 days, the case shall proceed on its normal course.

20 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
21 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
22 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
23 its normal course on the trial court's calendar.

24 **11. MODIFICATION**

25 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
26 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

27 **12. ATTORNEY'S FEES**

28 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.

1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16 Date: 2/23/22

17 Date: 2/22/22

18 By: Anthony Ferreira

19 By: M. K. P.

20 ANTHONY FERREIRO

21 MICRO LIFE USA, INC.

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

23 Dated: 05/10/2022

24 Jeffrey S. Brand
25 Judge of Superior Court

26 **Jeffrey Brand / Judge**