

Electronically Received 10/19/2021 03:16 PM

Electronically Received 10/19/2021 03:16 PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744
VINEET DUBEY, STATE BAR NO. 243208
CUSTODIO & DUBEY LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071
Telephone: (213) 593-9095
Facsimile: (213) 785-2899

Attorneys for Plaintiff Ecological Alliance, LLC

FILED
Superior Court of California
County of Los Angeles

10/22/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Mendoza Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California
limited liability company,

Plaintiff,

v.

SKIP HOP, INC., a New York corporation,

Defendant.

Case No.: 21STCV33630

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Skip Hop, Inc. (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

WHEREAS: On or about March 24, 2021, Plaintiff, through Plaintiff’s counsel, served a 60 Day Notice to Defendant, T.J. Maxx of CA, LLC, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000 (collectively, “Public Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq., and its implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file an enforcement action in the public interest; and

WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed baby bath mats containing Diisononyl phthalate (“DINP”), (collectively the “Covered Products”) that were sold or distributed for sale in California and further alleges that those Covered Products expose consumers in the State of California to DINP, which is listed by the State of California pursuant to California Health and Safety Code § 25249.8; and

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

WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

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

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

1
2 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
3 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

4 **I. INTRODUCTION**

5 1.1. On March 24, 2021, Plaintiff served the 60-Day Notice upon Defendant, T.J.
6 Maxx of CA, LLC, and on Public Prosecutors. No Public Prosecutors commenced an
7 enforcement action. No Public Prosecutor having commenced an enforcement action,
8 Plaintiff proceeded to file its Complaint against Defendant in the present action.

9 1.2. Defendant employs ten (10) or more persons.

10 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
11 "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation
12 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
13 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
14 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
15 claims which were or could have been raised in the Complaint based on the facts alleged
16 therein with respect to the Covered Products, and of all claims which were or could have
17 been raised by any person or entity based in whole or in part, directly or indirectly, on the
18 facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related
19 thereto, with respect to Covered Products, including any Proposition 65 claim arising out
20 of an exposure to Covered Products (collectively, "Proposition 65 Claims").

21 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
22 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
23 resolving the issues raised therein both as to past and future conduct. By execution of
24 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
25 any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with
26 the Consent Judgment constitute or be construed as an admission by Defendant of any
27 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
28

1
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. Commencing 90 days after the Effective Date, Defendant shall not sell or
9 distribute for sale to consumers in California, or sell directly to consumers in California
10 any Covered Product unless, either (a) the Covered Product complies with the
11 Proposition 65 exemption identified in Section 3.2 below, or (b) the Covered Product is
12 labeled with a warning as prescribed in Sections 3.3-3.4 below. Compliance with this
13 Section 3.1 will constitute compliance by Defendant with all requirements of Proposition
14 65 relating to DINP exposure in the Covered Products.

15 3.2. Proposition 65 Exemption for the Covered Products

16 Covered Products shall be deemed to comply with Proposition 65, and be exempt from
17 any Proposition 65 warning requirements with respect to DINP, if such Covered Product
18 contains no more than 0.1 percent (1,000 parts per million) of DINP.

19 3.3. Warning Option

20 Covered Products that do not meet the warning exemption standard set forth in Section 3.2
21 above, shall be accompanied by a warning as described in Section 3.4 below.

22 3.4. Warning Language

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

- 27 (1) **WARNING:** This product can expose you to chemicals including
28 Di-n-butyl Phthalate ("DINP"), which is known to the State of

1
2 California to cause cancer. For more information go to
3 www.P65Warnings.ca.gov.

4 (2) **WARNING:** Cancer – www.P65Warnings.ca.gov.

5 The warning statements identified in (1) or (2) above shall also include a symbol
6 consisting of a black exclamation point in a yellow equilateral triangle with a bold
7 black outline. The symbol shall be placed to the left of the text of the warning, in a
8 size no smaller than the height of the word “WARNING”.

9 **4. MONETARY RELIEF**

10 4.1. Within thirty (30) days of the Effective Date, Defendant shall pay the total sum of
11 \$42,000 which includes \$8,000 in civil penalties and \$34,000 in payment of Plaintiff's
12 costs and reasonable attorney's fees. The \$8,000 civil penalty shall be apportioned
13 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$6,000, paid to
14 the State of California's Office of Environmental Health Hazard Assessment and 25%, or
15 \$2,000, payable to Plaintiff.

16 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
17 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
18 portions due to the State of California Office of Environmental Health Hazard
19 Assessment and to Plaintiff.

20 Bank: Bank of America, N.A.

21 Routing Transit No.: 026009593

22 Account No.: 325132729125

23 Beneficiary: Custodio & Dubey LLP

24 **5. CLAIMS COVERED AND RELEASE**

25 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
26 behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's
27 parent companies, including The William Carter Company, as well as all of Defendant's
28

1
2 officers, directors, members, shareholders, employees, attorneys, agents, parent
3 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, and
4 retailers, their parent and all subsidiaries, and affiliates, thereof, their respective
5 employees, agents and assigns, as well as all other upstream and downstream entities in
6 the distribution chain for any of the Covered Products, and the predecessors, successors,
7 and assigns of any of them (collectively, the "Released Parties"), for any alleged
8 violation of Proposition 65, and its implementing regulations, for failure to provide
9 Proposition 65 warnings for the Covered Products with respect to DINP, and fully
10 resolves all claims that have been brought, or which could have been brought in this
11 action up to and including the Effective Date. Plaintiff on behalf of itself, and in the
12 public interest, hereby discharges the Released Parties from any and all claims, actions,
13 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
14 asserted, or that could have been asserted, with respect to any alleged violation of
15 Proposition 65 arising from the failure to provide Proposition 65 warnings about
16 exposures to DINP for any or all of the Covered Products, through and including the
17 Effective Date.

18 5.2. It is possible that other claims not known to the Parties arising out of the facts
19 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
20 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on
21 the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment
22 is expressly intended to cover and include all such claims through and including the
23 Effective Date, including all rights of action thereon. Plaintiff and Defendant
24 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
25 claims, and nevertheless intend to release such claims, and in doing so waive California
26 Civil Code § 1542 which reads as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

1
2 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
3 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
4 OR HER SETTLEMENT WITH THE DEBTOR.

5 5.3. Plaintiff understands and acknowledges that the significance and consequence of
6 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
7 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
8 Covered Products, including but not limited to any exposure to, or failure to warn with
9 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
10 for those damages against any of the Released Parties.

11 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute
12 compliance with Proposition 65 with respect to exposure to DINP in the Covered
13 Products as set forth in the 60 Day Notice and/or the Complaint.

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

15 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
16 referenced in California Health and Safety Code § 25249.7(f).

17
18 **7. PROVISION OF NOTICE**

19 7.1. When any Party is entitled to receive any notice or writing under this Consent
20 Judgment, the notice or writing shall be sent by first class certified mail with return
21 receipt requested, or by electronic mail, as follows:

22 To Defendant:
23 General Counsel
24 Carter's, Inc.
25 3438 Peachtree Road NE, Suite 1800
Atlanta, GA 30326

26 Jeffrey Margulies, Esq.
27 Norton Rose Fulbright US LLP
28 555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071
jeff.margulies@nortonrosefulbright.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To Plaintiff:
Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Ste 2520
Los Angeles, CA 90071
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, and shall apply only to Covered Products sold in California.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

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

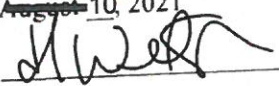
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

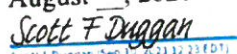
September
Date: ~~August~~ 10, 2021

By: 
Harmony Welsh, Managing Member

AGREED TO:

Skip Hop, Inc.

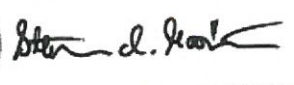
Date: August __, 2021

By: 
Scott F. Duggan (Sen 17, 2021 12:23:07)

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: 10/22/2021




Stephen I. Goorvitch / Judge

JUDGE OF THE SUPERIOR COURT