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Attorneys for Plaintiff

FILED

Superior Court of California
County of San Francisco

JUN 20 2024

CLERK OF THE SUPERIOR COURT
By Victor De Pineda
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PRECILA BALABBO,

Plaintiff,

v.

OTTER PRODUCTS, LLC, THE TJX
COMPANIES, INC.,

Defendants.

Case No.: CGC-22-599663

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: June 20, 2024

Hearing Time: 9:30 AM

Complaint Filed: May 17, 2022

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Otter Products, LLC (“Otter” or
4 “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them
5 as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. Otter is alleged to be a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
10 individuals to bisphenol A (BPA) from its sales of Lifeproof iPhone 11 cases, UPC #
11 660543512127, without providing a clear and reasonable exposure warning under Proposition 65.
12 BPA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
13 birth defects or other reproductive harm.

14 1.3 **Notice of Violation/Action.** On or about May 26, 2021, Balabbo served Otter and
15 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
16 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
17 Proposition 65 for failing to warn consumers and customers that use of Lifeproof iPhone 11 cases,
18 UPC # 660543512127, expose users in California to BPA. No public enforcer has brought and is
19 diligently prosecuting the claims alleged in the Notice. On May 17, 2022, Balabbo filed a complaint
20 (the “Complaint”).

21 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
23 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
24 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
25 of all claims which were or could have been raised in the Action based on the facts alleged therein
26 and in the Notice.

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1 1.5 Defendant denies the factual and legal allegations contained in Balabbo's Notice
2 and Complaint and maintains that, to the best of its knowledge, all products that are or have been
3 sold and distributed in California, including the Products, have been and are in compliance with all
4 laws.. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
5 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
6 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of
7 law, or violation of law, such being specifically denied by Defendant. However, this section shall
8 not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this
9 Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means Lifeproof iPhone 11 cases,
12 UPC # 660543512127, that are manufactured, distributed, shipped into California and offered for
13 sale in California by Otter.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Clear and Reasonable Warning.** Commencing within ninety (90) days after this
18 Consent Judgment is signed by both Parties, and continuing thereafter, a clear and reasonable
19 exposure warning as set forth in this §§ 3.1 and 3.2 must be provided for all Covered Products that
20 Defendant manufacturers, imports, distributes, sells, or offers for sale in California. There shall be
21 no obligation for Defendant to provide a warning for Covered Products that enter the stream of
22 commerce prior to the date this Consent Judgment is signed by both Parties, or within 90 days after
23 the date this Consent Judgment is signed by both Parties. The warning shall consist of either the
24 **Warning or Alternative Warning** described in §§ 3.1(a) or (b), respectively:

25 (a) **Warning.** The "Warning" shall consist of the statement:

26 **⚠ WARNING:** This product can expose you to chemicals including bisphenol
27 A (BPA), which is known to the State of California to cause birth defects or other
28 reproductive harm. For more information go to www.P65Warnings.ca.gov.

1 (b) **Alternative Warning:** Otter may, but is not required to, use the alternative short-
2 form warning as set forth in this § 3.1(b) ("**Alternative Warning**") as follows:

3  **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

4 3.2 A **Warning or Alternative Warning** provided pursuant to § 3.1 must print the word
5 "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to
6 the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral
7 triangle with a black outline, except that if the sign or label for the Covered Product does not use
8 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
9 than the height of the word "**WARNING:**". The **Warning or Alternative Warning** shall be affixed
10 to or printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or
11 electronic device or automatic process, providing that the **Warning or Alternative Warning** is
12 displayed with such conspicuousness, as compared with other words, statements, or designs as to
13 render it likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use. The **Warning or Alternative Warning** may be contained in the same section of
15 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
16 the use of the Covered Product and shall be at least the same size as those other safety warnings.

17 In addition to affixing the **Warning or Alternative Warning** to the Covered Product's
18 packaging or labeling, the **Warning or Alternative Warning** shall be posted on websites, operated
19 and controlled by Otter, where Otter offers Products for sale to consumers in California. The
20 requirements of this Section shall be satisfied if the **Warning or Alternative Warning**, or a clearly
21 marked hyperlink using the word "**WARNING,**" appears on the product display page, or by
22 otherwise prominently displaying the warning to the purchaser prior to completing the purchase.
23 To comply with this Section, Otter shall (a) post the **Warning or Alternative Warning** on its own
24 website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b)
25 if it does not have the ability to post the **Warning or Alternative Warning** on the websites of its
26 third-party internet sellers, provide such sellers with written notice in accordance with Title 27,
27 California Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product that
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1 have been provided with written notice in accordance with Title 27, California Code of Regulations,
2 § 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning
3 requirements herein.

4 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
5 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
6 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
7 Covered Product and exposures at issue after the Effective Date, or within 90 days after the
8 Effective Date. If “consumer information,” as that term is defined in Title 27, California Code of
9 Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign
10 language, Otter shall provide the **Warning** or **Alternative Warning** in the foreign language in
11 accordance with applicable warning regulations adopted by OEHHA.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** Otter shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
14 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
15 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
16 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

17 **4.1.1** Within thirty (30) days of the Effective Date, Otter shall issue two separate
18 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b)
19 “Brodsky Smith in Trust for Balabbo” in the amount of \$500.00. Payment owed to Balabbo
20 pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire
22 Brodsky Smith
23 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

26 For United States Postal Service Delivery:

27 Mike Gyurics
Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 1001 I Street
8 Sacramento, CA 95814

9 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
10 above as proof of payment to OEHHA.

11 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Otter shall pay
12 \$20,500.00 to "Brodsky Smith" as complete reimbursement for Balabbo's attorneys' fees and costs
13 incurred as a result of investigating, bringing this matter to the attention of Otter, litigating and
14 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
15 of Civil Procedure § 1021.5.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
18 acting on her own behalf, and on behalf of the public interest, and Otter, and its parents,
19 shareholders, members, directors, officers, managers, employees, representatives, agents,
20 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
21 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
22 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
23 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
24 retailers, including but not limited to, The TJX Companies, Inc., and its parents, subsidiaries, and
25 affiliates, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
26 violations of Proposition 65 based on exposure to BPA from use of the Covered Products
27 manufactured, distributed, or sold by Otter prior to the Effective Date, or within 90 days after the
28 Effective Date, as set forth in the Notice. It is the Parties' intention that this Consent Judgment shall
have preclusive effect such that no other actions by private enforcers, whether purporting to act in
his, her, or its interests or the public interest shall be permitted to pursue and take any action with

1 respect to any violation of Proposition 65 based on exposure to BPA from use of the Covered
2 Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice
3 against Otter and the Downstream Releasees ("Proposition 65 Claims"). Otter's compliance with
4 the terms of this Consent Judgment constitutes compliance with Proposition 65 by Otter with regard
5 to exposure to BPA from use of the Covered Products.

6 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
7 agents, representatives, attorneys, and successors and assignees, and *not* in her representative
8 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
9 legal action and releases Otter, Defendant Releasees, and Downstream Releasees from any and all
10 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
11 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
12 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
13 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
14 Products manufactured, distributed, or sold by Otter, Defendant Releasees or Downstream
15 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
16 specifically waives any and all rights and benefits which she now has, or in the future may have,
17 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
18 follows:

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

25 5.3 Otter waives any and all claims against Balabbo, her attorneys and other
26 representatives, for any and all actions taken, or statements made (or those that could have been
27 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
28 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
and with respect to Covered Products.

1 **5.4 Public Benefit.** It is Defendant's understanding that the commitments it has agreed
2 to herein, and actions to be taken by Defendant under this Settlement Agreement, would confer a
3 significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal.
4 Admin. Code tit. 11, § 3201. As such, it is the intent of Defendant that to the extent any other
5 private party initiates an action alleging a violation of Proposition 65 with respect to Defendant's
6 failure to provide a warning concerning exposure to BPA prior to use of the Products it has
7 manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute,
8 sell, or offer for sale in California, such private party action would not confer a significant benefit
9 on the general public as to those Products addressed in this Settlement Agreement, provided that
10 Defendant is in material compliance with this Settlement Agreement.

11 **6. INTEGRATION**

12 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
13 any and all prior negotiations and understandings related hereto shall be deemed to have been
14 merged within it. No representations or terms of agreement other than those contained herein exist
15 or have been made by any Party with respect to the other Party or the subject matter hereof.

16 **7. GOVERNING LAW**

17 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California and apply within the State of California. In the event that Proposition 65 is repealed or
19 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
20 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
21 to the extent that, Covered Products are so affected.

22 **8. NOTICES**

23 8.1 Unless specified herein, all correspondence and notices required to be provided
24 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
25 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
26 by the other party at the following addresses:

27 For Defendant:

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Spencer Hugret
Eric Sentlinger
Gordon Rees Scully Mansukhani
275 Battery Street, Suite 2000
San Francisco, CA 94111

And

For Balabbo:

Evan Smith
Brodsky Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT

APPROVAL

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

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

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

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11. MODIFICATION

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

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: _____

Date: 17 April 2024

By: _____
PRECILA BALABBO

By: *K. M. [Signature]*, General Counsel
OTTER PRODUCTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

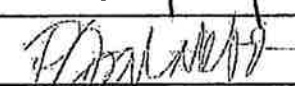
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8 pursuant to law.

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11 Consent Judgment.

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

<p>18 AGREED TO:</p> <p>19</p> <p>20 Date: <u>5 / 2 / 24</u></p> <p>21 By: <u></u></p> <p>22 PRECILA BALABBO</p>	<p>18 AGREED TO:</p> <p>19</p> <p>20 Date: _____</p> <p>21 By: _____</p> <p>22 OTTER PRODUCTS, LLC</p>
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23
24 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

<p>25</p> <p>26 Dated: <u>6/20/24</u></p> <p>27</p>	<p>26 <u></u></p> <p>27 Judge of Superior Court</p> <p>28 RICHARD B. ULMER</p>
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