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FILED
San Francisco County Superior Court

JUN 02 2023

CLERK OF THE COURT

BY:  Deputy Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 SHERALVEN ENTERPRISES, LTD., THE TJX
15 COMPANIES, INC.,

16 Defendants.

Case No.: CGC-22-599232

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: June 2, 2023

Hearing Time: 9:30 AM

Complaint Filed: April 19, 2022

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo acting on behalf of the public interest (hereinafter “Balabbo”) and Sheralven Enterprises, Ltd. (“Sheralven” or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Balabbo 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. Sheralven 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.** Balabbo alleges that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of BUM equipment cases, UPC 746480169607, without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about December 20, 2021, Balabbo served Sheralven, BUM Equipment, LLC, The TJX Companies, Inc., 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 BUM equipment cases expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On April 19, 2022, Balabbo 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 San Francisco, 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.

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2 1.5 Defendant denies the material allegations contained in Balabbo's Notice and
3 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
4 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
5 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
6 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
7 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
8 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means BUM equipment cases
11 that are manufactured, distributed and/or offered for sale in California by Sheralven.

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: REFORMULATION AND/OR WARNINGS**

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

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.
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1 3.3 **Clear and Reasonable Warning.** As of the Effective Date, a clear and reasonable
2 exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that
3 Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a
4 Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered
5 Products that enter the stream of commerce prior to the Effective Date. The warning shall consist
6 of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

12 (b) **Alternative Warning:** Sheralven may, but is not required to, use the alternative
13 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.

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** or **Alternative Warning** shall be affixed
21 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
26 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
27 the use of the Covered Product and shall be at least the same size as those other safety warnings.

28 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where

1 Sheralven offers Covered Products for sale to consumers in California. The requirements of this
2 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink
3 using the word “**WARNING**,” appears on the product display page, or by otherwise prominently
4 displaying the warning to the purchaser prior to completing the purchase. To comply with this
5 Section, Sheralven shall (a) post the **Warning** or **Alternative Warning** on its own website and, if
6 it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not
7 have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party
8 internet sellers, provide such sellers with written notice in accordance with Title 27, California
9 Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been
10 provided with written notice in accordance with Title 27, California Code of Regulations, Section
11 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning
12 requirements of this Section.

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”) applicable to the Covered Product and
17 the exposure at issue after the Effective Date.

18 **4. MONETARY TERMS**

19 4.1 **Civil Penalty.** Sheralven shall pay \$1,000.00 as a Civil Penalty pursuant to Health
20 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
21 Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
22 remaining 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety
23 Code § 25249.12(d).

24 4.1.1 Within fourteen (14) business days of the Effective Date or upon
25 Defendant’s receipt of W-9 forms from the appropriate payees, whichever is later, Sheralven shall
26 issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of
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1 \$750.00; and to (b) "Precila Balabbo" in the amount of \$250.00. Payment owed to Balabbo
2 pursuant to this Section shall be delivered to the following payment address:

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

7 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
8 to OEHHA (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 OEHHA shall be mailed to Brodsky & Smith at the address set
22 forth above as proof of payment to OEHHA.

23 4.2 **Attorneys' Fees.** Within fourteen (14) business days of the Effective Date, or upon
24 Defendant's receipt of W-9 forms from the appropriate payees, whichever is later, Sheralven shall
25 pay \$19,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for
26 Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
27 Sheralven attention, litigating and negotiating and obtaining judicial approval of a settlement in the
28 public interest, pursuant to Code of Civil Procedure § 1021.5.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
31 acting on her own behalf, and on behalf of the public interest, and Sheralven, and its parents,
32 shareholders, members, directors, officers, managers, employees, representatives, agents,

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

15 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
16 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action and releases Sheralven, Defendant Releasees, and Downstream Releasees from any
19 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 DEHP exposure from Covered Products manufactured, distributed, or sold by Sheralven,
24 Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers and releases
25 in this paragraph, Balabbo hereby specifically waives any and all rights and benefits which she now
26 has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California
27 Civil Code, which provides as follows:
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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 Sheralven waives any and all claims against Balabbo, her 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 Balabbo and her 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 DEHP exposure from Covered Products.

12 **6. INTEGRATION**

13 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
14 prior negotiations and understandings related hereto shall be deemed to have been merged within
15 it. No representations or terms of agreement other than those contained herein exist or have been
16 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. If Proposition 65 is repealed or is otherwise
20 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
21 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
22 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:

Stuart Steinberg, Esq.
Stuart M. Steinberg, P.C.
2 Rodeo Drive

For Plaintiff

Evan Smith
Brodsky & Smith
9595 Wilshire, Blvd., Ste. 900

1 Edgewood, New York 11717
2 ssteinberg@steinbergpc.net

Beverly Hills, CA 90212

3 With a copy to

4 Jeffrey B. Margulies
5 Norton Rose Fulbright US LLP
6 555 South Flower Street, Forty-First Floor
7 Los Angeles, CA 90071
8 jeff.margulies@nortonrosefulbright.com

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

11 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

12 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
13 which shall be deemed an original, and all of which, when taken together, shall constitute one and
14 the same document.

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

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

20 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
21 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
22 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
23 days, the case shall proceed on its normal course. Balabbo shall file a request for dismissal with
24 prejudice of the entire action within three business days of the Effective Date.

25 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
26 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
27 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
28 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: April 14, 2023

Date: _____

By: *Precila Balabbo*
PRECILA BALABBO

By: _____
SHERALVEN ENTERPRISES, LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

10 JOSEPH M. QUINN

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AGREED TO:

AGREED TO:

Date: _____

Date: 8/25/22

By: _____
PRECILA BALABBO

By: [Signature]
SHERALVEN ENTERPRISES, LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: June 2, 2023

[Signature]
Judge of Superior Court

JOSEPH M. QUINN