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Attorney for Plaintiff SARA HAMMOND

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SARA HAMMOND, an individual, Plaintiff, v. UPPER CANADA SOAP & CANDLE MAKERS CORPORATION, a corporation, Defendant.	Case No.: 22CV007911 ~~[PROPOSED]~~ **STIPULATED CONSENT JUDGMENT**

STIPULATED CONSENT JUDGMENT

Plaintiff Sara Hammond ("Plaintiff"), and Defendant Upper Canada Soap & Candle Makers Corporation ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent Judgment") as follows:

WHEREAS, on or about September 1, 2021, Plaintiff served a 60-Day Notice of Violation upon Defendant and Ross Stores, Inc. ("Ross"), 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 Prosecutors") alleging that Defendant and Ross 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 against Defendant and Ross in the public interest;

WHEREAS, on or about December 22, 2021, Plaintiff served a Supplemental 60-Day Notice of Violation, further refining the definition of the product category alleging that Defendant violated Proposition 65 and that Plaintiff intended to file an enforcement action against Defendant in the public interest;

WHEREAS, Plaintiff alleges that Defendant manufactured, imported, and/or distributed to Ross and the public Covered Products, as defined below, without a clear and reasonable warning.

WHEREAS, Plaintiff further alleges that persons in the State of California were exposed to DEHP in Covered Products without being provided the Proposition 65 warning set out at California Health and Safety Code § 25249.6 and its implementing regulations;

WHEREAS, Defendant denies the allegations of the 60-Day Notice of Violation, denies that it has violated Proposition 65, and 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.

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

1. Introduction

1.1. On September 1, 2021, Plaintiff served the 60-Day Notice of Violation upon Defendant, Ross, and on Public Prosecutors. No Public Prosecutor commenced an enforcement action.

1.2. On December 22, 2021, Plaintiff served the Supplemental 60-Day Notice of Violation upon Defendant and Public Prosecutors, refining the category of the products at issue in the September 1, 2021 60-Day Notice of Violation. No Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file her Complaint against Defendant in the present action.

1.3. On March 3, 2022 Plaintiff filed a complaint for civil penalties and injunctive relief in Alameda County Superior Court against Defendant. The complaint alleges that Defendant violated Proposition 65 for failure to allegedly provide a clear and reasonable warning of alleged exposure to DEHP in the Covered Products.

1.1. For purposes of this Consent Judgment only, Defendant is deemed a person in the course of doing business in California and subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

1.2. For purposes of this Consent Judgment only, the Parties stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the Complaint; 2) venue is proper in the County of Alameda; and 3) this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein with respect to the Covered Products, and of all claims which were or could have been raised by any person or entity based on or arising from the facts alleged in the 60-Day Notice of Violation and/or the present action with respect to Covered Products, including any Proposition 65 claim arising out of an exposure to Covered Products (collectively, "Proposition 65 Claims").

1.3. The Parties enter into this Consent Judgment as a full and final settlement of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation, and resolving the issues raised therein. By executing and agreeing to the terms of this Consent Judgment, the Parties do not admit any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with the Consent Judgment be construed as an admission by Defendant of any fact, conclusion of law, or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notice of Violation and the Complaint, and denies any wrongdoing whatsoever.

2. Definitions

2.1. "Effective Date" shall mean the date the Consent Judgment has been approved and entered by the Court.

2.2. "Covered Products" shall mean reusable plastic storage bags and cases for products, including but not limited to, bath, spa, personal care, skin care, and cosmetic products, sold, distributed, and/or manufactured by Upper Canada Soap & Candle Makers Corporation.

2.3. "Parties" shall mean Plaintiff and Defendant.

2.4. "DEHP" shall mean Di(2-ethylhexyl)phthalate.

3. No Admission

3.1. The Parties enter into this Consent Judgment to settle disputed claims between them concerning the Parties' and the Covered Products' compliance with Proposition 65. Specifically, Plaintiff alleges that Defendant imported, manufactured, sold or distributed for sale in the state of California, Covered Products containing DEHP without first providing the clear and reasonable warning required by Proposition 65. Defendant denies that such a warning is required under Proposition 65 or any otherwise applicable law.

3.2. Defendant further denies the material, factual, and legal allegations contained in the Notice and Complaint and maintains that all of the products that it has imported, manufactured and/or sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent

Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. This Section shall not, however, diminish or otherwise affect Defendant's obligations, responsibilities, and duties herein.

4. Injunctive Relief

4.1. After the Effective Date, Defendant shall not sell, distribute, or ship into California any Covered Products unless the Covered Products: (1) meets the reformulation requirements in section 4.2 or (2) are labeled with a Proposition 65 warning as described in Sections 4.3-4.4 below. Compliance with Section 4.1 will constitute compliance by Defendant with all requirements of Proposition 65 relating to DEHP exposure in the Covered Products.

4.2. Reformulation Requirements

After the Effective Date, Covered Products must contain no more than 1,000 parts per million (0.1%) in DEHP. In order to determine compliance with this reformulation standard, Defendant may rely on third party testing from an accredited laboratory.

4.3. Warning Option

Should Defendant elect to provide a warning, the Covered Products shall be accompanied by a warning as described in Section 4.4, below. No Proposition 65 warning shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

4.4. Warning Language

Where required to meet the criteria set forth in Section 3.2, Defendant shall provide one of the following warning statements on, or affixed to the packaging of the Covered Products in a reasonably conspicuous manner. Further the warning shall be affixed to or printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the

packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Covered Product and shall be at least the same size as those other safety warnings.:

(1) ⚠**WARNING**: The packaging for this product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(2) ⚠**WARNING**: Cancer and Reproductive Harm –www.P65Warnings.ca.gov.

The Parties agree that the specifications for warnings in this Consent Judgment comply with Proposition 65 and its regulations as of the date of this Consent Judgment, and with regulations adopted on or about August 30, 2016 and which became effective August 30, 2018.

If modifications or amendments to Proposition 65 or its "safe harbor" regulations after the Effective Date are adopted as to what constitutes a "clear and reasonable warning," Defendant may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

5. Monetary Relief

5.1. Within ten (10) business days of the Effective Date or upon receipt of appropriate W-9 Forms from the payee, whichever is later, Defendant shall pay the total sum of $29,000 which includes $1,000 in civil penalties and $28,000 in payment of Plaintiff's costs and reasonable attorney's fees. The $1,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12(d), with 75%, or $750, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or $250, payable to Plaintiff.

5.2. The payments specified in Section 4.1 shall be made by check and sent via tracked overnight mail to Plaintiff's counsel Joseph D. Agliozzo, Law Corporation as set forth below. Plaintiff's counsel will remit the portions due to the State of California Office of Environmental Health Hazard Assessment and to Plaintiff.

Joseph D. Agliozzo, Law Corporation
1601 N. Sepulveda Boulevard, # 649
Manhattan Beach, CA 90266

6. Claims Covered and Release

6.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of herself, and acting in the public interest, and Defendant, and all of Defendant's parent companies, as well as all of Defendant's officers, directors, members, shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, and retailers, their parent and all subsidiaries, and affiliates, thereof, their respective employees, agents and assigns, as well as all other upstream and downstream entities in the distribution chain, including wholesalers, customers, retailers (including but not limited to, Ross Stores, Inc., its parents, subsidiaries, and affiliates), franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees for any of the Covered Products, and the predecessors, successors, and assigns of any of them (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for the Covered Products with respect to DEHP, and fully resolves all claims that have been brought, or which could have been brought in this action up to and including the Effective Date. Plaintiff on behalf of herself, and in the public interest, hereby discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings about exposures to DEHP for the Covered Products, through and including the Effective Date.

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

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

6.3. Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of, resulting from, or related to the Covered Products, Plaintiff will not be able to make any claim for those damages against any of the Released Parties.

6.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposure to DEHP in the Covered Products as set forth in the 60-Day Notice of Violation and/or the Complaint.

7. Compliance with Health and Safety Code Section 25249.7(f)

7.1. Plaintiff and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

8. Provision of Notice

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

To Defendant:
Stephen Flatt
President
Upper Canada
5875 Chedworth Way
Mississauga ON L5R 3L9

With a copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 Flower St 41st floor
Los Angeles, CA 90071

To Plaintiff:
Joseph D. Agliozzo, Esq.
Joseph D. Agliozzo, Law Corporation
1601 N. Sepulveda Boulevard, # 649
Manhattan Beach, CA 90266
joe@agliozzo.com

8.2. 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.

9. Court Approval

9.1. Upon execution of his Consent Judgment by all Parties, the Parties shall prepare and file a Motion for Approval of this Consent Judgment. 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.

10. Governing Law and Construction

10.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

11. Entire Agreement

11.1. 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 incorporated into this Consent Judgment.

11.2. 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 the Parties.

11.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties only to the extent that they are expressly incorporated herein.

11.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound, and approved and ordered by the Court.

11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed to constitute a waiver of any of the other provisions of this Consent Judgement whether or not similar, nor shall such waiver constitute a continuing waiver.

12. Retention of Jurisdiction

12.1. This Court shall retain jurisdiction of this matter to implement, enforce, or modify the Consent Judgment under Code of Civil Procedure section 664.6.

13. Enforcement of Judgment

13.1. The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of California, County of Alameda, giving the notice required by law, enforce the terms and conditions contained herein. A party may enforce any of the terms and conditions of this Consent Judgment only after that party first provides 30 days' notice to the party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such party's failure to comply in good faith.

14. No Effect on Other Settlements

14.1. Unless expressly stated or released, 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.

15. Execution in Counterparts

15.1. 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.

16. Authorization

16.1. 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.

17. Severability

17.1. 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:

Sara Hammond

Date: April 1, 2022

By: _____
Sara Hammond

AGREED TO:

Upper Canada Soap & Candle Makers Corporation

Date: April 11, 2022

By: _____, Its PRESIDENT

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: 5-24-22

_____
Hon. Superior Court Judge

Julia Spain

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	**FILED** Superior Court of California County of Alameda 05/24/2022 Chad Finke, Executive Officer / Clerk of the Court By: D. Labrecque Deputy
PLAINTIFF/PETITIONER: Sara Hammond	
DEFENDANT/RESPONDENT: Upper Canada Soap & Candle Makers Corporation, a corporation	
CERTIFICATE OF MAILING	CASE NUMBER: 22CV007911

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

EVA YANG
NORTON ROSE FULBRIGHT US LLP
555 SOUTH FLOWER STREET, 41ST FL FORTY-FIRST FLOOR
LOS ANGELES, CA 90071

Joseph D. Agliozzo
Joseph D. Agliozzo Law Corporation
1601 N. Sepulveda Boulevard, #649
Manhattan Beach, CA 90266

Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/24/2022

By:

D. Labrecque, Deputy Clerk

CERTIFICATE OF MAILING