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Attorneys for Plaintiff
Precila Balabbo

FILED
Superior Court of California
County of San Francisco

JUN 21 2023
CLERK OF THE COURT
BY: _____
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PRECILA BALABBO,

Plaintiff,

v.
SKIP HOP, INC.,

Defendant.

Case No.: CGC-22-603658

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: May 26, 2023
Hearing Time: 9:30 AM
Complaint Filed: December 23, 2022

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo (“Balabbo”) and Skip Hop, Inc. (“Skip Hop”). Together, Balabbo and Skip Hop are collectively referred to as the “Parties.” Balabbo is an individual who resides in the State of California and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Balabbo alleges that Skip Hop is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 **General Allegations.** Balabbo alleges that Skip Hop and Barnes & Noble (as defined below) have exposed individuals to the chemical di-isodecyl phthalate (DIDP) from their sales of Skip Hop Big Kid Backpacks without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DIDP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 **Notice of Violation and Complaint.** On March 17, 2022, Balabbo served Barnes & Noble, Inc.; Barnes & Noble Booksellers, Inc. (collectively, “Barnes & Noble”), The William Carter Company, Skip Hop, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Skip Hop, Barnes & Noble and such others, including public enforcers, with notice that alleged that Skip Hop was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Covered Products will expose them to DIDP. No public enforcer has diligently prosecuted the allegations set forth in the Notice. On December 23, 2022, Balabbo filed the complaint in this matter.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Skip Hop as to the allegations contained in the complaint, 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

1 were, or could have been raised in the Complaint based on the facts alleged therein and/or in the
2 Notice and of all claims which were or could have been raised by any person or entity based in
3 whole or in part, directly or indirectly, on the facts alleged in the Notice, the Complaint, or arising
4 therefrom or related thereto with respect to Covered Products, including any Proposition 65 claim
5 arising out of an exposure to Covered Products.

6 1.5 **No Admission.** Each of Skip Hop and Barnes & Noble denies the material factual
7 and legal allegations contained in the Notice and complaint and maintains that, to the best of its
8 knowledge, all products that are or have been sold and distributed in California, including the
9 Covered Products, have been and are in compliance with all laws. Nothing in this Consent
10 Judgment shall be construed as an admission by Skip Hop or Barnes & Noble, respectively, of any
11 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
12 constitute or be construed as an admission by Skip Hop or Barnes & Noble, respectively, of any
13 fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Skip
14 Hop and Barnes & Noble, respectively. However, this § 1.5 shall not diminish or otherwise affect
15 the obligations, responsibilities, and duties under this Consent Judgment.

16 2. **DEFINITIONS**

17 2.1 **Covered Products.** The term "Covered Products" means Big Kid Backpacks, that
18 are manufactured, distributed and/or offered for sale in California by Skip Hop.

19 2.2 **Effective Date.** The term "Effective Date" shall mean the date Skip Hop receives
20 notice that this Consent Judgment is entered as a judgment of the Court.

21 3. **INJUNCTIVE RELIEF**

22 3.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
23 Skip Hop shall not sell or distribute for sale to consumers in California, or sell directly to consumers
24 in California Covered Products unless, either: (a) the Covered Product complies with the
25 Proposition 65 exemption identified in § 3.2, below; or (b) the Covered Product is labeled with a
26 clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.
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1 **3.2 Exemption from Warning Requirement.** Products that contain concentrations less
2 than or equal to 0.1% (1,000 parts per million (ppm)) of DIDP when analyzed pursuant to U.S.
3 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology
4 utilized by federal or state government agencies for the purpose of determining the phthalate
5 content in a solid substance are exempt from the warning requirement of Sections 3.3 and 3.4.

6 **3.3 Clear and Reasonable Warning.** As of 90 days after the Effective Date, and
7 continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4
8 must be provided for all Covered Products that Skip Hop manufactures, imports, distributes, sells,
9 or offers for sale in California that are not exempt under § 3.2. There shall be no obligation for Skip
10 Hop to provide an exposure warning for Covered Products that entered the stream of commerce
11 prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative**
12 **Warning** described in §§ 3.3(a) or (b), respectively:

13 (b) **Warning.** The “Warning” shall consist of the statement:

14 ⚠ **WARNING:** This product can expose you to chemicals including di-isodecyl
15 phthalate (DIDP), which are known to the State of California to cause birth
16 defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

17 ⚠ (b) **Alternative Warning:** Skip Hop may, but is not required to, use the alternative
18 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

19 ⚠ **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

20 **3.4 A Warning or Alternative Warning** required pursuant to § 3.3 shall be affixed to
21 or printed on the Covered Products’ packaging or labeling with such conspicuousness, as compared
22 with other words, statements, or designs as to render it likely to be read and understood by an
23 ordinary individual under customary conditions of purchase or use. Skip Hop shall also provide a
24 **Warning or Alternative Warning** for any Covered Products that Skip Hop offers online for sale
25 to consumers in California. The **Warning or Alternative Warning** or a clearly marked hyperlink
26 using the word “**WARNING**” must either be displayed on the product display page, or prior to
27 completion of the purchase of the Covered Product. Third-party internet sellers of the Product to
28 whom Skip Hop has provided written notice of the need to post a warning for Covered Products in

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accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

3.5 **Compliance with Warning Regulations.** The Parties agree that Skip Hop shall be deemed to be in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Product and the exposure at issue after the Effective Date.

4. **MONETARY TERMS**

4.1 **Civil Penalty.** In settlement of all the claims referred to in this Consent Judgment, Skip Hop shall pay \$2,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Balabbo.

4.2 **Attorneys' Fees.** The Parties acknowledge that Balabbo and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Balabbo and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through court approval of this Consent Judgment. Under these legal principles, Skip Hop shall reimburse Balabbo's counsel in the amount of \$23,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Skip Hop's attention and negotiating a settlement in the public interest.

4.3 **Payment Procedures.**

4.3.1 Within 30 days of the Effective Date or receipt of W-9 forms for Balabbo, Brodsky & Smith, and OEHHA, Skip Hop shall make a wire transfer payment to Brodsky & Smith in the amount of \$25,000.00 as full and final satisfaction of all monies due and

1 owing pursuant to this Consent Judgment. Payment owed to Brodsky & Smith pursuant to
2 this Section shall be delivered to the following wire payment address:

3	ACH:	or	WIRES:
4	BANK OF AMERICA		BANK OF AMERICA
5	Brodsky Smith, LLP Trust Account		Brodsky Smith, LLP Trust Account
6	Account Number: 325179952900		Account Number: 325179952900
	Routing Number: 121000358		Routing Number: 026009593

7 4.3.2 Within 15 days of receiving Skip Hop's settlement payment, Brodsky &
8 Smith shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the
9 amount of \$1,500.00; and (b) "Precila Balabbo" in the amount of \$500.00. Payment owed
10 to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to
11 OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

20 **5. RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
22 acting on her own behalf, and on behalf of the public interest, and Skip Hop, and its parents,
23 shareholders, members, directors, officers, managers, employees, representatives, agents,
24 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
25 predecessors, successors and assigns ("Defendant Releasees"), and all entities to whom they
26 directly or indirectly distribute or sell Covered Products, including but not limited to Barnes &
27 Noble, Inc., its predecessors, parents, subsidiaries, affiliated entities under common ownership,
28 directors, officers, agents, employees and attorneys, and all other wholesalers, customers, licensors,

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licensees, retailers, franchisees, and cooperative members (collectively, the "Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to DIDP from Covered Products as set forth in the Notice and Complaint, with respect to any Covered Products manufactured, distributed, or sold by Skip Hop prior to the Effective Date. Defendant Releasees' compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to exposure to DIDP from the Covered Products.

5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity, hereby releases Defendant Releasees and Downstream Releasees from all claims that she has asserted or could have asserted against said Releasees arising out of Proposition 65. Balabbo acting on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity further waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases Skip Hop, Defendant Releasees, and Downstream Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by Skip Hop, Defendant Releasees, or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides 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.

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6. ENFORCEMENT.

6.1 The Parties may, by motion or application for an order to show cause enforce the terms of this Consent Judgment. This Consent Judgment may only be enforced by the Parties.

6.2 Prior to bringing any motion or application to enforce the requirements of this Consent Judgment, a Party shall provide the other Party with written notice of the alleged violation. If Balabbo alleges that Skip Hop has violated Section 3, she shall provide a copy of any test results and evidence regarding the lack of warning that purportedly support the notice of violation.

6.3 Following receipt of the notice of alleged violation, the Parties shall meet and confer in an attempt to resolve the alleged violation informally, including providing Skip Hop with a reasonable opportunity of at least 30 days to cure any alleged violation of Section 3, before filing any motion or application seeking enforcement of the Consent Judgment.

6.4 In any motion or application brought to enforce the terms of this Consent Judgment, the prevailing party shall be entitled to recover its reasonable attorney's fees.

7. SEVERABILITY.

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Consent Judgment being contrary to the intent of the Parties in entering into this Consent Judgment.

8. GOVERNING LAW.

The terms of this Consent Judgment shall be governed by the law of the State of California and shall apply only to Covered Products sold in the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Covered Products, Skip Hop shall provide written notice to Balabbo of any asserted change in the law and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, a Product is so affected.

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9. NOTICES

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

For Skip Hop:

General Counsel
The William Carter Company
3438 Peachtree Road NE, Suite 1800
Atlanta, GA 30326

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

For Balabbo:

Evan J. Smith
Brodsky & Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either 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.

10. COUNTERPARTS: SIGNATURES

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

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

11.1 Balabbo agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Skip Hop agrees it shall support approval of such Motion.

11.2 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

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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.

11.3 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.

12. MODIFICATION

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

13. ENTIRE AGREEMENT

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

14. ATTORNEY'S FEES

14.1 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.

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

15. RETENTION OF JURISDICTION

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

16. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained of this Consent Judgment.

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AGREED TO:

AGREED TO:

Date: APRIL 10, 2023

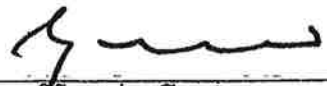
Date: JUN 3, 2023

By: 
PRECILA BALABBO

By: 
SKIP HOP, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: JUNE 20 2023


Judge of Superior Court

CURTIS E.A. KARNOW