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Attorneys for Plaintiff EVELYN WIMBERLEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

EVELYN WIMBERLEY,

Plaintiff,

v.

CVS/PHARMACY; BED BATH & BEYOND,
INC.,

Defendants.

Case No. 37-2011-00094008-CU-NP-CTL

**CONSENT JUDGMENT AS TO
DEFENDANT TELEBRANDS CORP.
[PROPOSED]**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are Plaintiff Evelyn Wimberley
3 (“Wimberley”) and Defendant Telebrands Corp. (“Telebrands”). Wimberley is an individual
4 residing in California who seeks to promote awareness of exposures to toxic chemicals and
5 improve human health by reducing or eliminating hazardous substances contained in consumer
6 products. Telebrands is a company that employs 10 or more persons.

7 1.2 On or about February 7, 2011, Wimberley served Telebrands and all public
8 enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the
9 State of California with a document entitled “60-Day Notice of Violation” (“Notice”) that alleged
10 that Telebrands was in violation of California Health & Safety Code § 25249.6 for failing to warn
11 consumers and customers that Jupiter Jack car speakerphone adapters exposed users in California
12 to lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

13 1.3 On July 28, 2011, Wimberley filed a complaint (“Complaint”) in San Diego
14 County Superior Court, entitled *Evelyn Wimberley v. CVS/Pharmacy, et al.*, San Diego County
15 Superior Court Case Number 37-2011-00094008-CU-NP-CTL, naming as defendants
16 CVS/Pharmacy and Bed Bath & Beyond, Inc. for civil penalties and injunctive relief pursuant to
17 the provisions of California Health & Safety Code §25249.5 *et seq.* (“Proposition 65”). On
18 August 8, 2011, Wimberley filed an amendment to the Complaint naming Telebrands as a
19 defendant.

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
21 has jurisdiction over the subject matter of the violations alleged in the Complaint and personal
22 jurisdiction over Telebrands as to the acts alleged in the Complaint, that venue is proper in the
23 County of San Diego, and that this Court has jurisdiction to enter this Consent Judgment as a full
24 and final resolution of all claims which were or could have been raised in the Complaint based on
25 the facts alleged therein.

26 1.5 This Consent Judgment resolves allegations and claims that are denied and
27 disputed by Telebrands. The Parties enter into this Consent Judgment pursuant to a full and final
28 settlement of any and all claims between the Parties, as they relate to lead in Covered Products, as

1 defined in Section 2.2 below. Telebrands denies the material factual and legal allegations
2 contained in the Notice and Complaint and maintains that all products that it has sold and
3 distributed in California, including the Covered Products, have been and are in compliance with
4 Proposition 65 and all other applicable laws. Nothing in this Consent Judgment shall be
5 construed as an admission by Telebrands of any fact, finding, issue of law, or violation of law;
6 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
7 Telebrands of any fact, finding, conclusion, issue of law, or violation of law, such being
8 specifically denied by Telebrands. However, this section shall not diminish or otherwise affect
9 the obligations, responsibilities, and duties of Telebrands under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 The term “Accessible Component” means any component of a Covered Product
12 that could be touched by a person during reasonably foreseeable use.

13 2.2 The term “Covered Product” means Jupiter Jack car speakerphone adapter.

14 2.3 The term “Effective Date” means the date on which this Consent Judgment is
15 entered by the Court.

16 **3. INJUNCTIVE RELIEF**

17 3.1 Commencing 180 days after the Effective Date, Telebrands shall not manufacture,
18 sell or distribute for sale in California Covered Products that contain more than 300 parts per
19 million (ppm) lead by weight in any Accessible Component.

20 **4. SETTLEMENT PAYMENTS**

21 4.1 Telebrands shall pay a settlement amount of \$7,500 to Wimberley to be allocated
22 by Wimberley as follows:

23 4.1.1 **Civil Penalty:** \$500 as a civil penalty pursuant to Health and Safety Code
24 Section 25249.7(b). Wimberley shall remit 75% of the civil penalty to the California
25 Office of Environmental Health hazard Assessment (“OEHHA”), pursuant to Health and
26 Safety Code Section 25192.

27 4.1.2 **Attorney Fees and Costs:** \$7,000 to reimburse Wimberley and her
28 attorneys for their reasonable investigation fees and costs, attorneys’ fees, and any other

1 costs incurred as a result of investigating, bringing this matter to Telebrands' attention,
2 litigating and negotiating and obtaining judicial approval of a settlement in the public
3 interest, pursuant to Code of Civil Procedure Section 1021.5.

4 4.1.3 **Timing of Payments:** Telebrands shall make the payments required under
5 this Consent Judgment no later than ten days after the Effective Date.

6 **5. ENFORCEMENT**

7 5.1 Any Party may, by motion or application for an order to show cause before this
8 Court, enforce the terms and conditions contained in this Consent Judgment. A Party may file
9 such a motion or application only after that Party first provides notice to the Party allegedly
10 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
11 such Party's failure to comply in an open and good faith manner for a period of no less than 30
12 days.

13 **6. RELEASE OF ALL CLAIMS**

14 6.1 This Consent Judgment is a full, final and binding resolution between Wimberley
15 on behalf of herself and the public interest and Telebrands, and its parents, shareholders,
16 divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
17 successors and assigns ("Defendant Releasees"), all entities from whom they obtain and to whom
18 they directly or indirectly distribute or sell Covered Products, including but not limited to
19 manufacturers, suppliers, distributors, wholesalers, customers, retailers, franchisees, cooperative
20 members, including but not limited to CVS Pharmacy, Inc. and Bed Bath & Beyond, Inc., and
21 Defendant Releasee's licensors and licensees ("Downstream Defendant Releasees") of any
22 violation of Proposition 65 that was or could have been asserted in the Complaint against
23 Telebrands, Defendant Releasees, and Downstream Defendant Releasees, based on failure to
24 warn about alleged exposure to lead contained in Covered Products, with respect to any Covered
25 Products manufactured, shipped, or sold by Telebrands prior to the Effective Date.

26 6.2 In further consideration of the promises and agreements herein contained, the
27 injunctive relief commitments set forth in Section 3.1, and for the payments to be made pursuant
28 to Section 4.1, Wimberley, on behalf of herself, her past and current agents, representatives,

1 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all
2 rights to institute or participate in, directly or indirectly, any form of legal action and release all
3 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
4 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
5 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
6 whether known or unknown, fixed, or contingent (collectively "claims"), that were or could have
7 been brought based on the facts in the Notice or Complaint against Telebrands, Defendant
8 Releasees, and Downstream Defendant Releasees.

9 6.3 Upon entry of this Consent Judgment, Wimberley shall file a dismissal with
10 prejudice of the Complaint against Telebrands' Downstream Defendant Releasees, including but
11 not limited to CVS Pharmacy, Inc. and Bed Bath & Beyond, Inc.

12 6.4 Compliance with the terms of this Consent Judgment by Telebrands shall
13 constitute compliance with Proposition 65 with respect to lead in any Covered Products that are
14 manufactured, shipped, or sold by Telebrands following the Effective Date.

15 6.5 Telebrands waives any and all claims against Wimberley, her attorneys and other
16 representatives, for any and all actions taken or statements made (or those that could have been
17 taken or made) by Wimberley and her attorneys and other representatives, whether in the course
18 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
19 matter, and/or with respect to the Covered Products that have accrued prior to the Effective Date.

20 **7. COURT APPROVAL**

21 7.1 This Consent Judgment is not effective until it is approved and entered by the
22 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
23 within one year after it has been fully executed by all Parties.

24 7.2 If the Court does not approve the Consent Judgment, the Parties shall meet and
25 confer as to whether to modify the terms of this Consent Judgment or appeal the ruling. If the
26 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal
27 course on the trial court's calendar.

28

1 7.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
3 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
4 that have been paid to Plaintiff pursuant to Section 4.1 shall be refunded within 15 days after
5 remittitur to the trial court, and the case shall proceed on its normal course on the trial court's
6 calendar.

7 **8. ATTORNEY'S FEES**

8 8.1 A party who unsuccessfully brings or contests an action arising out of this Consent
9 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
10 unless the unsuccessful party has acted with substantial justification. For purposes of this
11 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
12 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

13 8.2 Nothing in this Section 8 shall preclude a Party from seeking an award of
14 sanctions pursuant to law.

15 **9. ENTIRE AGREEMENT**

16 9.1 This Consent Judgment contains the sole and entire agreement and understanding
17 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
18 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
19 and therein. No representations, oral or otherwise, express or implied, other than those
20 specifically referred to in this Consent Judgment have been made by any Party hereto. No
21 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
22 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
23 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
24 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

25 **10. GOVERNING LAW AND APPLICATION**

26 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California and shall apply only to Covered Products that are sold or offered for sale in the State of
28 California.

1 10.2 This Consent Judgment shall apply to and be binding upon Wimberley and
2 Telebrands and its divisions, subdivisions, and subsidiaries, and the Parties' successors and
3 assigns .

4 10.3 The Parties, including their counsel, have participated in the preparation of this
5 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
6 Consent Judgment was subject to revision and modification by the Parties and has been accepted
7 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
8 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
9 of the manner of the preparation of this Consent Judgment.

10 **11. RETENTION OF JURISDICTION**

11 11.1 This Court shall retain jurisdiction of this matter to implement, modify, and
12 enforce the terms this Consent Judgment.

13 **12. NOTICES**

14 12.1 Unless specified herein, all correspondence and notices required to be provided
15 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
16 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
17 party by the other party at the following addresses:

18 For Telebrands:

19
20 Bala Iyer
21 Executive Vice President
22 Telebrands Corp.
23 79 Two Bridges Rd.
24 Fairfield, NJ 07004-1029

25 With a copy to:

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Jeffrey Margulies
Fulbright & Jaworski L.L.P.
555 South Flower St.
Forty First Floor
Los Angeles, CA 90071

For Wimberley:

Mr. Stephen Ure
Law Offices of Stephen Ure, PC.
1518 Sixth Avenue
San Diego, California 92101

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.

13. COUNTERPARTS; FACSIMILE SIGNATURES



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

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

14.1 Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

15. AUTHORIZATION

15.1 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 Consent Judgment.

<p>AGREED TO:</p> <p>Date: <u>January 23</u>, 2012</p> <p>By: </p> <p>Evelyn Wimberley</p>	<p>AGREED TO:</p> <p>Date: <u>January 26</u>, 2012</p> <p>By: </p> <p>On Behalf of Telebrands Corp.</p>
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