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6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA

9 UNLIMITED CIVIL JURISDICTION
10

11
12 MICHAEL DIPIRRO,

13 Plaintiff,

14 v.

15 NEWELL RUBBERMAID INC.; SANFORD
16 L.P.; *et al.*,

17 Defendants.
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Case No.

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Michael DiPirro (“DiPirro”),
4 and defendants, Newell Rubbermaid Inc., and Sanford L.P. (collectively, “Defendants”), with DiPirro
5 and Defendants each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 DiPirro is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendants**

11 Defendants each employ ten or more persons and each is a person in the course of doing
12 business for purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, Health &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 DiPirro alleges that Defendants sold business card holders with plastic sleeve sheets
16 containing Di(2-ethylhexyl)phthalate (also known as Bis(2-ethylhexyl) phthalate) (“DEHP”) without
17 first providing the clear and reasonable warning required by Proposition 65. DEHP is listed pursuant
18 to Proposition 65 as a chemical known to the State of California to cause birth defects and other
19 reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are business card holders with plastic
22 sleeve sheets containing DEHP that are imported, manufactured, sold, or distributed for sale by
23 Defendants to California consumers (collectively, “the Products”), as identified in Exhibit A attached
24 hereto, including without limitation the *Rolodex Professional 3-Ring Business Card Holder, 200*
25 *Card, Black (#66451) (UPC #071912664512)*.

1 **1.6 Notice of Violation**

2 On or about April 21, 2015, DiPirro served Defendants and the requisite public enforcement
3 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of
4 DiPirro’s allegation that Defendants and their retailers were in alleged violation of Proposition 65 for
5 failing to warn their customers and consumers in California that the Products purportedly expose
6 users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is
7 diligently prosecuting the allegations set forth in the Notice.

8 **1.7 Complaint**

9 On July 24, 2015, in order to permit the Parties to enter into this Consent Judgment, DiPirro
10 filed the instant action against Defendants (“Complaint”) for the alleged violations of Health &
11 Safety Code § 25249.6 that are the subject of the Notice.

12 **1.8 No Admission**

13 Defendants deny the material, factual and legal allegations contained in the Notice and
14 Complaint, and they maintain that all of the products that they have sold and distributed in California,
15 including the Products, have been, and are, in compliance with all laws, including Proposition 65.
16 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
17 of law, issue of law, or violation of law, nor shall entry into or compliance with this Consent
18 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of
19 law, or violation of law. This Section shall not, however, diminish or otherwise affect Defendants’
20 obligations, responsibilities, and duties under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in Alameda
24 County, and that this Court has jurisdiction to approve, enter and enforce the provisions of this
25 Consent Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean August 10,
28 2015.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 Commencing on the Effective Date and continuing thereafter, Defendants shall only import,
3 manufacture, sell or distribute for sale to California consumers the Products that are “Reformulated
4 Products.” For purposes of this Consent Judgment, Reformulated Products shall contain a maximum
5 of 1,000 parts per million (0.1%) DEHP content in any accessible component (i.e., any component
6 that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to EPA
7 testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal
8 agencies for the purpose of determining DEHP content in a solid substance. None of the Products
9 that were already imported, manufactured, sold or distributed for sale to California consumers prior
10 to the Effective Date shall be subject to this Section 2.

11 **3. MONETARY PAYMENTS**

12 **3.1 Civil Penalty Payments**

13 Pursuant to Health & Safety Code § 25249.7(b), Defendants shall pay a civil penalty of
14 \$4,500 pursuant to Section 3.3.1 below. The penalty payment shall be allocated according to Health
15 & Safety Code § 25249.12 (c) (1) and (d), with seventy-five percent (75%) of the penalty amount
16 earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and
17 the remaining twenty-five percent (25%) of the penalty amount earmarked for DiPirro. The penalty
18 payment shall be delivered to the address listed in Section 3.3 below.

19 **3.2 Reimbursement of DiPirro’s Fees and Costs**

20 The Parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
22 to be resolved after the material terms of the Consent Judgment had been settled. Shortly after all
23 other terms of the Consent Judgment had been finalized, Defendants expressed a desire to resolve
24 the fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due
25 to DiPirro and his counsel under general contract principles and the private attorney general doctrine
26 codified at Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees
27 and costs incurred on appeal, if any. Under these legal principles, pursuant to Section 3.3.1 below,
28 Defendants shall pay \$44,500 for the fees and costs incurred investigating, litigating, and enforcing

1 this matter, including the fees and costs incurred (and to be incurred) drafting, negotiating, and
2 obtaining the Court’s approval of this Consent Judgment in the public interest.

3 **3.3 Payment Procedures**

4 **3.3.1 Payments Held in Trust**

5 Payments shall be delivered to the Law Offices of David R. Bush within two (2)
6 business days of Court approval of this Consent Judgment, and shall be in the form of three checks
7 for the following amounts made payable to:

- 8 (a) “Law Office of David R. Bush” in the amount of \$3,375 for payment to
9 OEHHA. Law Office of David R. Bush agrees to forward such funds to OEHHA in a
10 timely manner.
11 (b) “Law Office of David R. Bush ” in the amount of \$1,125 as payment to
12 Michael DiPirro. David R. Bush agrees to forward such funds in a timely manner.;
13 and
14 (c) “Law Offices of David R. Bush” in the amount of \$44,500, as payment for
15 attorneys’ fees and costs.

16 **3.3.2 Issuance of 1099 Forms**

17 After the Consent Judgment has been approved, Defendants shall provide DiPirro’s
18 counsel with a separate 1099 form for each of its payments under this Agreement to:

- 19 (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010,
20 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the 2015
21 calendar year;
22 (b) “Michael DiPirro”, whose address and tax identification number shall be
23 furnished upon request after this Consent Judgment has been fully executed by the
24 Parties for the civil penalty payment in the 2015 calendar year; and
25 (c) “Law Offices of David R. Bush ” for fees and costs reimbursed pursuant to
26 section 3.2.

27 **3.3.3 Payment Address**

28 All payments and tax forms required by this Section shall be delivered to the

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2 following address:

3 Law Offices of David R. Bush
4 3270 Mendocino Ave. #2E
5 Santa Rosa, CA 95403

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 DiPirro's Public Release of Proposition 65 Claims**

8 DiPirro, acting on his own behalf and in the public interest, releases Defendants, and each of
9 them, and their respective officers, directors, managing agents, attorneys, representatives,
10 shareholders, parents, subsidiaries, affiliates, divisions, predecessors, successors, subdivisions,
11 manufacturers, distributors, downstream wholesalers and retailers from all claims for violations of
12 Proposition 65 up through the Effective Date based on alleged exposures to DEHP from the
13 Products, as set forth in the Notice and the Complaint. Compliance with the terms of this Consent
14 Judgment constitutes compliance with Proposition 65 with respect to alleged exposures to DEHP
15 from the Products sold by Defendants after the Effective Date.

16 **4.2 DiPirro's Individual Release of Claims**

17 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides
18 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
19 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
20 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,
21 suspected or unsuspected, arising out of alleged or actual exposures to DEHP from the Products
22 imported, manufactured, sold or distributed for sale by Defendants before the Effective Date.

23 **4.3 Defendants' Release of DiPirro**

24 Defendants on behalf of themselves and on behalf of their past and current agents,
25 representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against
26 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made
27 (or those that could have been taken or made) by DiPirro and his attorneys and other
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1 representatives, whether in the course of investigating claims, otherwise seeking to enforce
2 Proposition 65 against them in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

8 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
9 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
10 adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
14 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendants
15 may provide written notice to DiPirro and his attorneys of any asserted change in the law, and shall
16 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
17 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
18 Defendants from any obligation to comply with any pertinent state or federal toxics control laws.
19 This Consent Judgment shall be interpreted in accordance with the fair meaning of the terms herein,
20 without regard to which Party may have drafted any specific provision.

21 **8. NOTICES**

22 Unless specified herein, all correspondence and notices required by this Consent Judgment
23 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
24 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

25 For Defendants:

26 Kevin C. Mayer, Esq.
27 Crowell & Moring LLP
28 515 South Flower Street, 40th Floor
Los Angeles, California 90071

1 For DiPirro:

2 Law Offices of David R. Bush
3 3270 Mendocino Ave. #2E
4 Santa Rosa, CA 95403

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

11 **10. POST EXECUTION ACTIVITIES**

12 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
13 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
14 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
15 of obtaining such approval, DiPirro and Defendants agree to mutually employ their best efforts, and
16 that of their counsel, to support the approval and entry of this Consent Judgment in a timely manner.

17 **11. MODIFICATION**

18 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
19 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
20 application of any Party and the entry of a modified consent judgment by the Court.

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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions contained herein.
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5 **AGREED TO:**

6
7 Date: 8/12/15

8
9 By: 

10 MICHAEL DIPIRRO

AGREED TO:

11 Date: _____

12 By: _____

13 Bradford R. Turner, Senior Vice President,
14 General Counsel and Corporate Secretary
15 Newell Rubbermaid Inc.

AGREED TO:

16 Date: _____

17 By: _____

18 Bradford R. Turner, Senior Vice President,
19 General Counsel and Corporate Secretary
20 Sanford L.P.
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12. AUTHORIZATION

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


AGREED TO:

Date: _____

By: _____
MICHAEL DIPIRRO

AGREED TO:

Date: 8/17/15

By: 
Bradford R. Turner, Senior Vice President,
General Counsel and Corporate Secretary
Newell Rubbermaid Inc.

AGREED TO:

Date: 8/17/15


By: 
Bradford R. Turner, Senior Vice President,
General Counsel and Corporate Secretary
Sanford L.P.

Exhibit A

Product Identification

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Product by Category of SKUs

Product Name

1734451

**Rolodex 36-card Business Card Case
Rolodex 72-card Business Card Book**

1734452

**Rolodex® Identity Business Card Book,
96-card, Black and Gray**

1752535

Low Profile 36-Card Personal Card Case, Brown

76653

Neo Classic 96-Card Business Card Book, Black

82341

**Low Profile 96-Card Business Card Book, Hawthorn
Rose**

76651

**Identity 36-Card Personal Card Case,
Gray/Raspberry**

1752539

**Identity 96-Card Business Card Book,
Gray/Raspberry**

1752540

Faux Leather 200-Card 3-Ring Binder, Black

66451

Explorer 36-Card Personal Card Case, Brown

22335

Explorer 96-Card Business Card Book, Brown

22336

Explorer 240-Card Business Card Book, Brown

22337

Neo Classic 240-Card Business Card Book, Black

26507

Fashion 36-Card Personal Card Case, Black

62552

Fashion 96-Card Business Card Book, Black

62551

Faux Leather 120-Card 6-Ring Binder, Black

66454

Faux Leather 120-Card Business Card Case, Black

66490

Vinyl 192-Card Business Card Book, Black

67465

Vinyl 96-Card Business Card Book, Black

67467

Faux Leather 96-Card Business Card Book, Black

67473

Rolodex® Business Card Binder Kit

67696

**Rolodex® Low Profile Business Card Case,
36-card, Black**

76657

**Rolodex® Low Profile Business Card
Book, 96-card, Black**

76659

**Rolodex® Neo Classic Business Card
Case, 36-card**

82339