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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ESTATE OF MARTHA ELVIRA
VELARDE,

Plaintiff,

vs.

EZ-FLO INTERNATIONAL, INC. and
LOWE'S HOME CENTERS, LLC,

Defendants.

Case No. RG15782161

[PROPOSED] CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: September 20, 2016

Hearing Time: 3:45 PM

Reservation #: R-1767699

1 1. **Introduction**

2 1.1 On April 21, 2015, Martha Velarde (“Velarde”) served EZ-FLO International, Inc.
3 (“EZ-FLO”), Lowe’s Home Centers, LLC (“Lowe’s”), Lowe’s Companies, Inc., Eastman
4 Chemical Company, and various public enforcement agencies with a document entitled “Notice
5 of Violation of California Health & Safety Code § 25249.6, *et seq.*” for failing to warn consumers
6 and customers that the Eastman 10ft. Icemaker Connector, UPC# 0 91712 98513 6 (the
7 “Icemaker Connector”), exposed users in California to the chemical Di(2-ethylhexyl) phthalate
8 (DEHP). On April 24, 2015, Velarde served a second “Notice of Violation of California Health
9 & Safety Code § 25249.6, *et seq.*” on EZ-FLO, Lowe’s, Lowe’s Companies, Inc., Eastman
10 Chemical Company, and various public enforcement agencies for failing to warn consumers and
11 customers that the Eastman 5ft. PVC Dishwasher Connector, UPC# 0 91712 98529 7 (the
12 “Dishwasher Connector”), exposed users in California to the chemical DEHP. On June 2, 2015,
13 the two notices were amended as one (the “Notice”) in order to provide EZ-FLO and such others,
14 including public enforcers, with notice that alleged that EZ-FLO was in violation of California
15 Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), for failing to warn consumers and
16 customers that the Icemaker Connector and Dishwasher Connector (collectively, the “Products”),
17 exposed users in California to DEHP, a chemical known to the State of California to cause
18 cancer, birth defects and other reproductive harm without first providing a clear and reasonable
19 warning of such exposure. No public enforcer has prosecuted the allegations set forth in the
20 Notice.

21 1.2 On August 17, 2015, Velarde filed a Complaint for Civil Penalties and Injunctive
22 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG15782161, against EZ-
23 FLO, Lowe’s and Lowe’s Companies, Inc. alleging violations of Proposition 65.

24 1.3 On April 28, 2016, defendant Lowe’s Companies, Inc. was dismissed from the
25 Action, with prejudice.

26 1.4 On May 10, 2016, The Estate of Martha Velarde (“Plaintiff”) was substituted as
27 Plaintiff in the Action.

28 1.5 EZ-FLO and Plaintiff are collectively referred to herein as, the “Parties.”

1 1.6 EZ-FLO is a corporation that employs more than ten persons under California
2 Health and Safety Code §25249.6 and offered the Products for sale within the State of California.

3 1.7 The Complaint alleges, among other things, that EZ-FLO sold the Products in
4 California and/or to California citizens, that the Products contain DEHP, and that the resulting
5 exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons
6 to a chemical known to the State of California to cause cancer, birth defects or other reproductive
7 harm, without first providing a clear and reasonable warning to such individuals.

8 1.8 For purposes of this Consent Judgment only, the Parties stipulate that this Court
9 has jurisdiction over the allegations of violations contained in the Complaint and personal
10 jurisdiction over EZ-FLO as to the acts alleged in the Complaint, that venue is proper in the
11 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a
12 resolution of the allegations contained in the Complaint.

13 1.9 The Parties enter into this Consent Judgment pursuant to a full settlement of
14 disputed claims between the Parties as alleged in or which could have been alleged in the
15 Complaint for the purpose of avoiding prolonged litigation. By negotiation, execution and
16 implementation of this Consent Judgment, EZ-FLO does not admit any violation of Proposition
17 65 and specifically deny that they have committed any such violation. Nothing in this Consent
18 Judgment or the implementation of its terms shall be construed as an admission by EZ-FLO of
19 any fact, issue of law or violation of law, nor shall compliance with the Consent Judgment
20 constitute or be construed as an admission by EZ-FLO of any fact, issue of law, or violation of
21 law. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy or
22 defense that EZ-FLO may have in any other future legal proceeding.

23 1.10 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
24 date that the Consent Judgment is entered by the Court.

25 **2. Injunctive Relief**

26 2.1 Commencing on the Effective Date, and continuing thereafter, EZ-FLO shall only
27 ship, sell, or offer for sale in California, reformulated Products pursuant to Section 2.2 or Products
28 that are labeled with a clear and reasonable warning pursuant to Section 2.3. EZ-FLO and its

1 downstream retailers, including but not limited to Lowe's, shall have no obligation to label
2 Products that entered the stream of commerce prior to the Effective Date. For purposes of this
3 Consent Judgement, "Reformulated Products" are Products that are in compliance with the
4 standard set forth below in section 2.2.

5 2.2 "Reformulated Products" shall mean Products that contain less than or equal to
6 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to CPSC-CH-C1001-09.3
7 Standard Operating Procedure for Determination of Phthalates method.

8 2.3 Commencing on the Effective Date, EZ-FLO shall, for all Products it sells or
9 distributes and which are intended for sale in California or which EZ-FLO has reason to believe
10 will be shipped or sold in California and that are not Reformulated Products, provide a clear and
11 reasonable warning as set forth in subsections 2.3(a) and (b) below. The warning shall be
12 prominently placed with such conspicuousness as compared with other words, statements,
13 designs, or devices as to render it likely to be read and understood by an ordinary individual
14 under customary conditions before purchase or use. Each warning shall be provided in a manner
15 such that the consumer or user understands to which specific Products the warning applies, so as
16 to minimize the risk of consumer confusion.

17 (a) **Retail Store Sales**

18 (i) **Products Labeling.** EZ-FLO shall affix a warning to the
19 packaging, labeling or directly on Products sold in retail outlets in California by
20 EZ-FLO or any person selling the Products that states:

21 **PROPOSITION 65 WARNING:**
22 This Products contains chemicals known to the State of California to cause cancer,
birth defects or other reproductive harm.

23 (ii) **Point of Sale Warnings.** Alternatively, EZ-FLO may
24 provide warning signs in the form below to its customers in California with
25 instructions to post the warnings in close proximity to the point of display
26 of the Products. Such instruction sent to EZ-FLO's customers shall be sent
27 by certified mail, return receipt requested.
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PROPOSITION 65 WARNING:

This Products contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

(b) **Mail Order Catalog Warning.** EZ-FLO does not presently sell any items via mail order catalogs directly to consumers. In the event that EZ-FLO directly sells Products via mail order catalog directly to consumers located in California after the Effective Date that are not Reformulated Products, EZ-FLO shall provide a warning for such Products sold via mail order catalog to such California residents. A warning that is given in a mail order catalog shall be in the same type size or larger than the Products description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Products:

PROPOSITION 65 WARNING:

This Products contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Products, EZ-FLO may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Products:

WARNING: Certain Products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Products. On each page where the designated symbol appears, EZ-FLO must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(c) **Internet Sales Warning.** In the event that EZ-FLO directly sells Products via the internet directly to consumers located in California after the Effective Date that are not Reformulated Products, EZ-FLO shall provide a warning for such Products sold via the

1 internet to such California residents. A warning that is given on the internet shall be in the same
2 type size or larger than the Products' description text and shall be given in conjunction with the
3 direct sale of the Products. The warning shall appear either: (a) on the same web page on which
4 the Products is displayed; (b) on the same web page as the order form for the Products; (c) on the
5 same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser
6 during the checkout process. The following warning shall be provided:

7 **PROPOSITION 65 WARNING:**

8 This Products contains chemicals known to the State of California to cause cancer, birth
9 defects or other reproductive harm.

10 **3. Entry of Consent Judgment**

11 3.1 The Parties hereby request the Court promptly enter this Consent Judgment. Upon
12 entry of this Consent Judgment, Plaintiff and EZ-FLO waive their respective rights to a hearing or
13 trial on the allegations in, or which could have been alleged in, the Complaint and Notice.

14 3.2 In the event that the Attorney General objects or otherwise comments on one or
15 more provisions of this Consent Judgment, Plaintiff and EZ-FLO agrees to take reasonable steps
16 to satisfy such concerns or objections.

17 **4. Matters Covered By This Consent Judgment**

18 4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent Judgment is a
19 final and binding resolution between Plaintiff, acting on its own behalf, and on behalf of the
20 public and in the public interest, and Defendant EZ-FLO, and shall have preclusive effect such
21 that no other person or entity, whether purporting to act in his, her, or its interests or the public
22 interest shall be permitted to pursue and/or take any action with respect to: (i) any violation of
23 Proposition 65 that was alleged or which could have been alleged in the Complaint, or that could
24 have been brought pursuant to the Notice against EZ-FLO or its downstream retailers of the
25 Products including but not limited to Lowe's ("Proposition 65 Claims"); or (ii) any other
26 statutory or common law claim, to the fullest extent that any of the foregoing described in (i) or
27 (ii) were or could have been asserted by any person or entity against EZ-FLO based on their
28 exposure of persons to the Products, or their failure to provide a clear and reasonable warning of

1 exposure to such individuals, or (iii) as to alleged exposures to the Products, any other claim
2 based in whole or in part on the facts alleged in the Complaint and the Notice, whether based on
3 actions committed by EZ-FLO. As to alleged exposures to DEHP in the Products, compliance
4 with the terms of this Consent Judgment by EZ-FLO is deemed sufficient to satisfy all obligations
5 concerning compliance by EZ-FLO and its downstream retailers including but not limited to
6 Lowe's with the requirements of Proposition 65 with respect to the Products.

7 4.2 **Plaintiff's Release of Additional Claims.** As to alleged exposures to the
8 Products, Plaintiff for and in its individual capacity only waives all rights to institute any form of
9 legal action, and releases all claims against EZ-FLO and its downstream retailers including but
10 not limited to Lowe's (including each of their parents, subsidiaries, affiliates, assigns and
11 acquiring entities, who may use, maintain, distribute or sell the Products) whether under
12 Proposition 65 or otherwise, arising out of or resulting from, or related directly or indirectly, in
13 whole or in part, to the facts alleged in the Complaint and the Notice, or to the Products, including
14 but not limited to any exposure to, or failure to warn with respect to, the Products, whether based
15 on actions committed by EZ-FLO or any of its downstream retailers including but not limited to
16 Lowe's ("DEHP Exposure Claims").

17 4.3 **Waiver of Rights Under Section 1542 of the California Civil Code.** As to
18 Plaintiff's public release of Proposition 65 Claims set forth in Section 4.1 ("Public Release") and
19 its individual release of DEHP Exposure Claims set forth in Section 4.2 ("Individual Release"),
20 Plaintiff, acting on its own and on behalf of the public with respect to the Public Release, and
21 acting in its individual capacity with respect to the Individual Release, waives all rights to
22 institute any form of legal action, and releases all claims against EZ-FLO and its downstream
23 retailers including but not limited to Lowe's (including each of their parents, subsidiaries,
24 affiliates, assigns and acquiring entities, who may use, maintain, distribute or sell the Products)
25 for the Proposition 65 Claims and the DEHP Exposure Claims (referred to collectively in this
26 Section as "Claims"). In furtherance of the foregoing, Plaintiff, acting on its own and on behalf
27 of the public with respect to the Public Release, and acting in its individual capacity with respect
28 to the Individual Release, knowingly and intentionally waives any and all rights and benefits

1 which it now has, or in the future may have, conferred upon it with respect to the Claims by virtue
2 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
6 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
7 OR HER SETTLEMENT WITH THE DEBTOR.

8 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
9 California Civil Code Section 1542 is that even if Plaintiff or the public (to extent covered by this
10 release) suffers future damages arising out of or resulting from, or related directly or indirectly to,
11 in whole or in part, this Agreement, the Complaint or the Notice, or the Products, including but
12 not limited to any exposure to or failure to warn with respect to exposure to the Products, Plaintiff
13 and the public (to extent covered by this release) will not be able to make any claim for those
14 damages against EZ-FLO or any of its downstream retailers, including but not limited to Lowe's.

15 **5. Enforcement of Judgment**

16 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto.
17 The Parties may, by noticed motion or order to show cause before the Superior Court of Alameda
18 County, giving the notice required by law, enforce the terms and conditions contained herein. In
19 any proceeding brought by either party to enforce this Consent Judgment, such party may seek
20 whatever fines, costs, penalties or remedies as may be provided by law for any violation of
21 Proposition 65 or this Consent Judgment.

22 **6. Modification of Judgment**

23 6.1 This Consent Judgment may be modified only by written agreement of the Parties
24 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
25 provided by law and upon an entry of a modified Consent Judgment by the Court.

26 6.2 Should any court enter final judgment in a case brought by Plaintiff or the People
27 involving the Products that sets forth standards defining when Proposition 65 warnings will or
28 will not be required ("Alternative Standards"), or if the California Attorney General's office

1 otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney General
2 that is not intended for the purpose of soliciting further input or comments) of Alternative
3 Standards applicable to the Products that are of the same general type and function as the
4 Products and constructed from the same materials, EZ-FLO shall be entitled to seek a
5 modification of this Consent Judgment on forty-five (45) days' notice to Plaintiff so as to be able
6 to utilize and rely on such Alternative Standards in lieu of those set forth in Section 7 of this
7 Consent Judgment. Plaintiff shall not unreasonably contest any proposed application to effectuate
8 such a modification provided that the Products for which such a modification is sought are of the
9 same general type and function as those to which the Alternative Standards apply.

10 **7. Settlement Payment**

11 7.1 In settlement of all the claims referred to in this Consent Judgment, and without
12 any admission of liability therefore, which claims are expressly denied, EZ-FLO shall make the
13 following monetary payments:

14 7.1.1 EZ-FLO shall pay a total of \$1,500.00 in civil penalties in accordance with
15 this Section. The civil penalty payment will be allocated in accordance with California Health &
16 Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of
17 Environmental Health Hazard Assessment ("OEHHHA") and the remaining 25% of the civil
18 penalty remitted to Plaintiff. Each penalty payment shall be delivered to the addresses listed in
19 Section 7.1.3 below.

20 7.1.2 In addition to the payment above, EZ-FLO shall pay \$21,000.00 to
21 Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff's attorneys'
22 fees and costs, including any investigation and laboratory costs or expert fees, incurred in the
23 course of bringing the Action, and in enforcing Proposition 65, including without limitation,
24 preparation of the 60-Day Notice letter and discussions with the office of the Attorney General.
25 Payment shall be made within seven (7) business days of the Effective Date.

26 7.1.3 Within seven (7) business days of the Effective Date, or within three (3)
27 business days of EZ-FLO's receipt of the tax identification numbers for Plaintiff and Brodsky
28 Smith, whichever is later, EZ-FLO shall issue two separate checks for the initial civil penalty

1 payment to (a) "OEHHA" in the amount of \$1,125.00; and (b) "Brodsky & Smith, LLC in Trust
2 for The Estate of Martha Velarde" in the amount of \$375.00. Payment owed to Plaintiff pursuant
3 to this Section shall be delivered to the following payment address:

4 Evan J. Smith, Esquire
5 Brodsky & Smith, LLC
6 Two Bala Plaza, Suite 510
7 Bala Cynwyd, PA 19004

8 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
9 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

10 For United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010
15 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
20 1001 I Street
21 Sacramento, CA 95814

22 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address
23 set forth above as proof of payment to OEHHA.

24 **8. Notices**

25 Any and all notices between the Parties provided for or permitted under this Agreement,
26 or by law, shall be in writing and personally delivered or sent by: (i) first-class (registered or
27 certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the
28 other party to the following addresses:

For EZ-FLO:

Michael J. Hassen
JEFFER MANGELS BUTLER & MITCHELL LLP
Two Embarcadero Center, 5th Floor
San Francisco, CA 94111
T: 415.398.8080

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For Plaintiff:

Evan J. Smith
BRODSKY & SMITH, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
T: 877.354.2590

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.

9. Authority to Stipulate

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

10. Counterparts

This Stipulation may be signed in counterparts and shall be binding upon the Parties hereto as if all said parties executed the original hereof.

11. Retention of Jurisdiction

This Court shall retain jurisdiction of this matter for a period of two (2) years to implement the Consent Judgment.

12. Service on the Attorney General

Plaintiff shall serve a copy of this Consent Judgment, signed by all parties, on the California Attorney General on behalf of the Parties so that the California Attorney General may review this Consent Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the California Attorney General has received the aforementioned copy of this Consent Judgment, and in the absence of any written objection by the California Attorney General to the terms of this Consent Judgment, the Parties may then submit it to the Court for approval.

13. Entire Agreement

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 discussions, negotiations, commitment and understandings related thereto. No representations, oral or otherwise, express or

1 implied, other than those contained herein have been made by any party hereto. No other
2 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to
3 bind any of the parties.

4 **14. Governing Law and Construction**

5 The validity, construction and performance of this Consent Judgment shall be governed by
6 the laws of the State of California, without reference to any conflicts of law provisions of
7 California law.

8 **15. Court Approval**

9 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
10 effect, and cannot be used in any proceeding for any purpose.

11 15.2 The Effective Date of this Consent Judgment shall be the date on which it is
12 entered by the Court.

13 **IT IS SO STIPULATED:**

14
15 Dated: 7/27/16

Dated: _____

16
17 By: *Martha Elvira Velarde*
18 The Estate of Martha Elvira Velarde

By: _____
Ez-Flo International, Inc.

19
20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

Judge of Superior Court

1 implied, other than those contained herein have been made by any party hereto. No other
2 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to
3 bind any of the parties.

4 **14. Governing Law and Construction**

5 The validity, construction and performance of this Consent Judgment shall be governed by
6 the laws of the State of California, without reference to any conflicts of law provisions of
7 California law.

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10 effect, and cannot be used in any proceeding for any purpose.

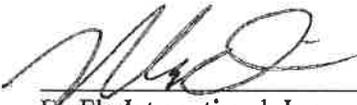
11 15.2 The Effective Date of this Consent Judgment shall be the date on which it is
12 entered by the Court.

13 **IT IS SO STIPULATED:**

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15 Dated: _____

Dated: 7-28-16

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17 By: _____
18 The Estate of Martha Elvira Velarde

By: 
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EZ-Flo International, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court