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8 *Attorneys for Plaintiff*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 I WORLD IP HOLDINGS LLC t/a  
15 IWORLD,

16 Defendant.

Case No. RG16821420

**[PROPOSED] CONSENT JUDGMENT**

Judge:

Dept.:

Hearing Date:

Hearing Time:

Reservation #:

1           **1. Introduction**

2           1.1     On March 2, 2016, Anthony Ferreiro (“Ferreiro”) served Marshalls of MA, Inc.  
3 (“Marshalls”), I World IP Holdings, LLC t/a IWorld, including iWorld LLC and its affiliates  
4 (collectively, “IWorld”), and various public enforcement agencies with a document entitled  
5 “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The  
6 Notice provided IWorld and such others, including public enforcers, with notice that alleged that  
7 IWorld was in violation of California Health & Safety Code § 25249.6 (“Proposition 65”), for  
8 failing to warn consumers and customers that *Racer Sport Buds* (in all colors and styles) (the  
9 “Product”) exposed users in California to the chemical Di(2-ethylhexyl) phthalate (DEHP). No  
10 public enforcer has diligently prosecuted the allegations set forth in the Notice.

11           1.2     On June 29, 2016, Ferreiro filed a Complaint for Civil Penalties and Injunctive  
12 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG16821420, against IWorld  
13 alleging violations of Proposition 65.

14           1.3     IWorld is considered a person in the course of doing business under California  
15 Health and Safety Code §25249.6 and offered the Product for sale within the State of California.

16           1.4     Ferreiro’s Complaint alleges, among other things, that IWorld sold the Product in  
17 California and/or to California citizens, that the Product contains DEHP, and that the resulting  
18 exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons  
19 to chemicals known to the State of California to cause both cancer and reproductive toxicity,  
20 without first providing a clear and reasonable warning to such individuals.

21           1.5     For purposes of this Consent Judgment only, the parties stipulate that this Court  
22 has jurisdiction over the allegations of violations contained in the Complaint and personal  
23 jurisdiction over IWorld as to the acts alleged in the Complaint, that venue is proper in the  
24 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a  
25 resolution of the allegations contained in the Complaint.

26           1.6     The parties enter into this Consent Judgment pursuant to a full settlement of  
27 disputed claims between the parties as alleged in the Complaint for the purpose of avoiding  
28 prolonged litigation. By execution of this Consent Judgment, IWorld does not admit any

1 violation of Proposition 65 and specifically denies that it has committed any such violation.  
2 Nothing in this Consent Judgment shall be construed as an admission by IWorld of any fact, issue  
3 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
4 construed as an admission by IWorld of any fact, issue of law, or violation of law. Nothing in  
5 this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that IWorld  
6 may have in any other future legal proceeding. However, this paragraph shall not diminish or  
7 otherwise affect the obligations, responsibilities and duties of IWorld under this Consent  
8 Judgment.

9 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
10 date that the Consent Judgment is entered by the Court.

11 **2. Injunctive Relief**

12 2.1 Commencing on the Effective Date, and continuing thereafter, IWorld shall only  
13 ship, sell, or offer for sale in California, reformulated Product pursuant to Section 2.2 or Product  
14 that is labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this  
15 Settlement Agreement, a "Reformulated Product" is Product that meets the standard set forth in  
16 Section 2.2 below.

17 2.2 "Reformulated Product" shall mean Product that contains less than or equal to  
18 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to CPSC-CH-C1001-09.3  
19 Standard Operating Procedure for Determination of Phthalates method.

20 2.3 Commencing on the Effective Date, IWorld shall, for all Product it sells or  
21 distributes and which (a) is intended for sale in California that is not a Reformulated Product, or  
22 (b) which IWorld has reason to believe will be shipped or sold in California which is not  
23 Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.3(a)  
24 and (b) below. The warning shall be prominently placed with such conspicuousness as compared  
25 with other words, statements, designs, or devices as to render it likely to be read and understood  
26 by an ordinary individual under customary conditions before purchase or use. Each warning shall  
27 be provided in a manner such that the consumer or user is reasonably likely to understand to  
28 which specific Product the warning applies, so as to minimize the risk of consumer confusion.

1 In the event that the Office of Environmental Health Hazard Assessment promulgates one  
2 or more regulations requiring or permitting warning text and/or methods of transmission different  
3 than those set forth above, IWorld shall be entitled to use, at its discretion, such other warning  
4 text and/or method of transmission without being deemed in breach of this Agreement.

5 (a) **Retail Store Sales**

6 (i) **Product Labeling.** IWorld shall affix a warning to the  
7 packaging, labeling or directly on each Product in California by IWorld that states:

8 **[PROPOSITION 65] WARNING:**

9 This product contains chemicals known to the State of California to cause cancer  
and birth defects or other reproductive harm.

10 The bracketed text may, but is not required to, be used.

11 (ii) **Point of Sale Warnings.** Alternatively, IWorld may

12 provide warning signs in the form below to its customers in California with  
13 instructions to post the warnings in close proximity to the point of display  
14 of the Product. Such instruction sent to IWorld customers shall be sent by  
15 certified mail, return receipt requested.

16 **[PROPOSITION 65] WARNING:**

17 This product contains chemicals known to the State of California to cause cancer  
18 and birth defects or other reproductive harm.

19 The bracketed text may, but is not required to, be used.

20 (b) **Mail Order Catalog Warning.** In the event that IWorld sells Product

21 via mail order catalog directly to consumers located in California after the Effective Date that is  
22 not a Reformulated Product, IWorld shall provide a warning for such Product sold via mail order  
23 catalog to such California residents. A warning that is given in a mail order catalog shall be in  
24 the same type size or larger than the Product description text within the catalog. The following  
25 warning shall be provided on the same page and in the same location as the display and/or  
26 description of the Product:

27 **[PROPOSITION 65] WARNING:**

28 This product contains chemicals known to the State of California to cause cancer  
and birth defects or other reproductive harm.

1 The bracketed text may, but is not required to, be used. Where it is impracticable to provide the  
2 warning on the same page and in the same location as the display and/or description of the  
3 Product, IWorld may utilize a designated symbol to cross reference the applicable warning and  
4 shall define the term “designated symbol” with the following language on the inside of the front  
5 cover of the catalog or on the same page as any order form for the Product:  
6

7 **[PROPOSITION 65] WARNING:** Certain products identified with this symbol  
8 and offered for sale in this catalog contain chemicals known to the State of  
California to cause cancer and birth defects or other reproductive harm.

9 The bracketed text may, but is not required to, be used. The designated symbol must  
10 appear on the same page and in close proximity to the display and/or description of the Product.  
11 On each page where the designated symbol appears, IWorld must provide a header or footer  
12 directing the consumer to the warning language and definition of the designated symbol.

13 (c) **Internet Sales Warning. Internet Sales Warning.** In the event  
14 that IWorld sells Product via the internet directly to consumers located in California after the  
15 Effective Date that is not a Reformulated Product, IWorld shall provide a warning for such  
16 Product sold via the internet to such California residents. A warning that is given on the internet  
17 shall be in the same type size or larger than the Product description text and shall be given in  
18 conjunction with the direct sale of the Product. The warning shall appear either: (a) on the same  
19 web page on which the Product is displayed; (b) on the same web page as the order form for the  
20 Product; (c) on the same page as the price for the Product; or (d) on one or more web pages  
21 displayed to a purchaser during the checkout process. The following warning shall be provided:

22 **[PROPOSITION 65] WARNING:**  
23 This product contains chemicals known to the State of California to cause cancer and birth  
24 defects or other reproductive harm.

25 2.4 The warning requirements set forth in Section 2.3 shall not apply to any  
26 Reformulated Product.

27 **3. Entry of Consent Judgment**

28 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.

1 Upon entry of this Consent Judgment, Ferreiro and IWorld waive their respective rights to a  
2 hearing or trial on the allegations of the Ferreiro Complaint and 60-Day Notice.

3 3.2 In the event that the Attorney General objects or otherwise comments on one or  
4 more provisions of this Consent Judgment, Ferreiro and IWorld agree to take reasonable steps to  
5 satisfy such concerns or objections.

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

7 4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent  
8 Judgment is a final and binding resolution between Ferreiro, acting on his own behalf, and on  
9 behalf of the public and in the public interest, and IWorld, and shall have preclusive effect such  
10 that no other person or entity, whether purporting to act in his, her, or its interests or the public  
11 interest shall be permitted to pursue and/or take any action with respect to any violation of  
12 Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the  
13 Notice ("Proposition 65 Claims"). As to alleged exposures to DEHP in the Product, compliance  
14 with the terms of this Consent Judgment by IWorld is deemed sufficient to satisfy all obligations  
15 concerning compliance by IWorld and its downstream retailers, including but not limited to  
16 Marshalls with the requirements of Proposition 65 with respect to the Products.

17 4.2 **Plaintiff's Release of Additional Claims.** As to Ferreiro for and in his  
18 individual capacity only, this Consent Judgment shall have preclusive effect such that he shall not  
19 be permitted to pursue and/or take any action with respect to any other statutory or common law  
20 claim, to the fullest extent that any such claim was or could have been asserted by him against  
21 IWorld based on its exposure of him to DEHP in the Product, or its failure to provide a clear and  
22 reasonable warning of exposure to Ferreiro of DEHP in the Product, as well as any other claim  
23 based in whole or in part on the facts alleged in the Complaint and/or the Notice, whether based  
24 on actions committed by IWorld or its downstream retailers of the Product, including but not  
25 limited to Marshalls ("DEHP Exposure Claims").

26 4.3 **Waiver of Rights Under Section 1542 of the California Civil Code.** As to  
27 Ferreiro's public release of Proposition 65 Claims set forth in Section 4.1 ("Public Release") and  
28 his individual release of DEHP Exposure Claims set forth in Section 4.2 ("Individual Release"),

1 Ferreiro, acting on his own behalf and on behalf of the public with respect to the Public Release  
2 and acting in his individual capacity with respect to the Individual Release, waives all rights to  
3 institute any form of legal action, and releases all claims against IWorld and its downstream  
4 retailers, including but not limited to Marshalls (including their parents, subsidiaries, affiliates,  
5 assigns, and acquiring entities of any of them, who may use, maintain, distribute or sell the  
6 Products) for the Proposition 65 Claims and the DEHP Exposure Claims (referred to collectively  
7 in this Section as “Claims”). In furtherance of the foregoing, Ferreiro, acting on his own behalf  
8 and on behalf of the public with respect to the Public Release and acting in his individual capacity  
9 with respect to the Individual Release, waives any and all rights and benefits which he now has,  
10 or in the future may have, conferred upon him with respect to the Claims by virtue of the  
11 provisions of § 1542 of the California Civil Code, which provides as follows:

12 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
13 **CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER**  
14 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
15 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**  
16 **HIS SETTLEMENT WITH THE DEBTOR.**

17 4.4 **IWorlds’s Release of Plaintiff Ferreiro.** IWorld, on behalf of itself, its past  
18 and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and  
19 all claims against Ferreiro, his attorneys, and other representatives for any and all actions taken or  
20 statements made (or those that could have been taken or made) by Ferreiro and his attorneys and  
21 other representatives, whether in the course of investigating claims or otherwise seeking  
22 enforcement of Proposition 65 against IWorld in this matter.

23 **5. Enforcement of Judgment**

24 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
25 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
26 Alameda County, giving the notice required by law, enforce the terms and conditions contained  
27 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party  
28 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation

1 of Proposition 65 or this Consent Judgment.

2 **6. Modification of Judgment**

3 6.1 This Consent Judgment may be modified only by written agreement of the parties  
4 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
5 provided by law and upon an entry of a modified Consent Judgment by the Court.

6 6.2 Should any court enter final judgment in a case brought by Ferreiro or the People  
7 involving the Product that sets forth standards defining when Proposition 65 warnings will or will  
8 not be required (“Alternative Standards”), or if the California Attorney General’s office otherwise  
9 provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not  
10 intended for the purpose of soliciting further input or comments) of Alternative Standards  
11 applicable to the products that are of the same general type and function as the Product and  
12 constructed from the same materials, IWorld shall be entitled to seek a modification of this  
13 Consent Judgment on sixty (60) days’ notice to Ferreiro so as to be able to utilize and rely on such  
14 Alternative Standards in lieu of those set forth in Section 7 of this Consent Judgment. Ferreiro  
15 shall not unreasonably contest any proposed application to effectuate such a modification  
16 provided that the Product for which such a modification is sought are of the same general type  
17 and function as those to which the Alternative Standards apply.

18 **7. Settlement Payment**

19 7.1 In settlement of all the claims referred to in this Consent Judgment, and without  
20 any admission of liability therefore, IWorld shall make the following monetary payments:

21 7.1.1 IWorld shall pay a total of \$2,000.00 in civil penalties in accordance with  
22 this Section. The civil penalty payment will be allocated in accordance with California Health &  
23 Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of  
24 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil  
25 penalty remitted to Ferreiro.

26 7.1.2 Within seven (7) business days of the Effective Date, IWorld shall issue  
27 two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of  
28 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00.

1 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment  
2 address:

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

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

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

23 7.1.3 In addition to the payment above, IWorld shall pay \$25,000.00 to Brodsky  
24 & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys'  
25 fees and costs, including any investigation and laboratory costs or expert fees, incurred in the  
26 course of bringing the Ferreiro action, and in enforcing Proposition 65, including without  
27 limitation, preparation of the 60-Day Notice letter and discussions with the office of the Attorney  
28 General. The parties acknowledge that Ferreiro and his counsel offered to resolve this dispute  
without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
this fee issue to be resolved after the material terms of the agreement had been settled. Ferreiro  
then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms  
had been finalized. The Parties reached an accord on the compensation due to Ferreiro and his  
counsel under general contract principles and the private attorney general doctrine and principles

1 codified at California Code of Civil Procedure § 1021.5, for all work performed through the  
2 mutual execution of this agreement. As such, within seven (7) business days of the Effective  
3 Date, IWorld shall issue one check to “Brodsky & Smith, LLC” for \$7,000.00 delivered to the  
4 address listed in Section 7.1.2 above. Thereafter, IWorld shall make the following payments to  
5 “Brodsky & Smith, LLC” on each one month (i.e. 60 day) anniversary of the Effective Date until  
6 all monies owed to Brodsky & Smith have been paid:

7 (a) \$9,000.00 is due 60 days after the Effective Date; and

8 (b) \$9,000.00 is due 120 days after the Effective Date.

9 IWorld shall be liable for penalty payment equal to \$1,000.00, for all amounts due and  
10 owing that are not received within five (5) calendar days of the date they are due.

11 **8. Notices**

12 8.1 Any and all notices between the parties provided for or permitted under this  
13 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class  
14 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
15 party by the other party to the following addresses:

16 For IWorld:

17 Steven Gold, Esq.  
18 MINTZ & GOLD LLP  
19 600 Third Avenue, 25<sup>th</sup> Floor  
20 New York, New York 10016  
21 212-696-4848

22 For Ferreiro:

23 Evan J. Smith  
24 BRODSKY & SMITH, LLC  
25 9595 Wilshire Blvd., Suite 900  
26 Beverly Hills, CA 90212  
27 T: 877.354.2590

28 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**

9.1 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

1 the party represented and legally to bind that party.

2 **10. Counterparts**

3 10.1 This Stipulation may be signed in counterparts and shall be binding upon the  
4 parties hereto as if all said parties executed the original hereof.

5 **11. Retention of Jurisdiction**

6 11.1 This Court shall retain jurisdiction of this matter to implement the Consent  
7 Judgment.

8 **12. Service on the Attorney General**

9 12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the  
10 California Attorney General on behalf of the parties so that the Attorney general may review this  
11 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)  
12 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
13 and in the absence of any written objection by the Attorney General to the terms of this Consent  
14 Judgment, the parties may then submit it to the Court for Approval.

15 **13. Entire Agreement**

16 13.1 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 discussions,  
18 negotiations, commitment and understandings related thereto. No representations, oral or  
19 otherwise, express or implied, other than those contained herein have been made by any party  
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
21 to exist or to bind any of the parties.

22 **14. Governing Law and Construction**

23 14.1 The validity, construction and performance of this Consent Judgment shall be  
24 governed by the laws of the State of California, without reference to any conflicts of law  
25 provisions of California law.

26 **15. Court Approval**

27 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
28 effect, and cannot be used in any proceeding for any purpose.

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**IT IS SO STIPULATED:**

Dated: 6/22/16

Dated: 6/24/2016

By: *Anthony Ferreiro*  
Anthony Ferreiro

By: *[Signature]*  
I World IP Holdings, LLC

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court