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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

DGL GROUP, LTD.,

Defendant.

Case No.: RG17860220
CONSENT JUDGMENT

Judge:

Dept.:

Hearing Date:

Hearing Time:

Reservation #:

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and DGL Group, Ltd.
4 (“DGL” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Ferreiro is an individual residing in California who seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. DGL is a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
10 individuals to Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate (DINP) from
11 electronics cables without providing clear and reasonable warnings under Proposition 65. DEHP
12 is listed under Proposition 65 as a chemical known to the State of California to cause cancer and
13 reproductive toxicity. DINP is listed under Proposition 65 as a chemical known to the State of
14 California to cause cancer.

15 1.3 **Notices of Violation/Complaint.** On or about March 8, 2016, Ferreiro served DGL,
16 and various public enforcement agencies, with a document entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in
18 violation of Proposition 65 for failing to warn consumers and customers that electronics cables
19 exposed users in California to DEHP and DINP. No public enforcer has brought and is diligently
20 prosecuting the claims alleged in the Notice. On May 15, 2017, Ferreiro filed a complaint (the
21 “Complaint”) in the matter.

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.

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1 1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means electronics cables that are
10 manufactured, distributed and/or offered for sale in California by DGL.

11 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: WARNINGS**

14 3.1 Commencing within ninety (90) days after the Effective Date, DGL shall not
15 manufacture, import, or purchase for sale in California any Covered Products with any accessible
16 component that contains either DEHP or DINP in excess of 0.1% (1,000 ppm) (hereinafter
17 “Reformulated Products”) unless the Covered Product is accompanied by the following warning:
18 “WARNING: This product contains chemicals known to the State of California to cause cancer and
19 birth defects or other reproductive harm.” In lieu of the preceding warning, DGL may use any
20 warning language that complies with Title 27, California Code of Regulations, section 25600 *et*
21 *seq.*, as amended August 30, 2016. DGL may rely upon its suppliers’ test results in order to
22 determine whether the products are Reformulated Products.

23 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
24 Covered Product’s packaging or labeling. The warning shall be displayed with such
25 conspicuousness, as compared with other words, statements, or designs, as to render it likely to be
26 read and understood by an ordinary individual under customary conditions of purchase or use. The
27 warning may be contained in the same section of the packaging, labeling, or instruction booklet
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1 that states other safety warnings, if any, concerning the use of the product and shall be at least the
2 same size as those other safety warnings.

3 3.3 Any Covered Products that have been distributed, shipped or sold by DGL prior to
4 the Effective Date, shall not be subject to the requirements of Section 3.1.

5 **4. MONETARY TERMS**

6 4.1 **Civil Penalty.** DGL shall pay a Civil Penalty of \$2,000.00 pursuant to California
7 Health and Safety Code § 25249.7(b), to be apportioned in accordance with California Health &
8 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
9 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
10 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

11 4.1.1 Within fourteen (14) business days of the Effective Date, DGL shall issue
12 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;
13 and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00. Payment owed
14 to Ferreiro pursuant to this Section shall be delivered to the following payment address:

15 Evan J. Smith, Esquire
16 Brodsky & Smith, LLC
17 Two Bala Plaza, Suite 510
18 Bala Cynwyd, PA 19004

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

21 For United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Non-United States Postal Service Delivery:

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

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

3 4.2 **Attorney Fees.** DGL shall pay \$30,000.00 to Brodsky & Smith, LLC (“Brodsky
4 Smith”) as complete reimbursement for Plaintiff Ferreiro’s attorneys’ fees and costs incurred as a
5 result of investigating, bringing this matter to DGL’s attention, litigating and negotiating and
6 obtaining judicial approval of a settlement in the public interest, pursuant to California Civil
7 Procedure Code § 1021.5. Payment shall be made within fourteen (14) business days of the
8 Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

9 **5. RELEASE OF ALL CLAIMS**

10 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
11 acting on his own behalf, and on behalf of the public interest, and DGL, and its parents,
12 shareholders, directors, officers, employees, representatives, agents, attorneys, divisions,
13 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
14 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to
15 whom they directly or indirectly distribute or sell the Covered Products, including but not limited
16 to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
17 franchisees, and cooperative members, including but not limited to Marshalls of MA, Inc.
18 (“Additional Releasees”), of all claims for violations of Proposition 65 based on exposure to DEHP
19 and DINP from the Covered Products as set forth in the Notice and Complaint, with respect to any
20 Covered Products manufactured, distributed, or sold by DGL prior to the Effective Date. This
21 Consent Judgment shall have preclusive effect such that no other person or entity, whether
22 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or
23 take any action with respect to any violation of Proposition 65 that was alleged in the Complaint,
24 or that could have been brought pursuant to the Notice against DGL, Defendant Releasees or
25 Additional Releasees. Compliance with the terms of this Consent Judgment constitutes compliance
26 with Proposition 65 with regard to the Covered Products.

27 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
28 agents, representatives, attorneys, successors and/or assignees, and *not* in his representative

1 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action and releases DGL, Defendant Releasees, and Additional Releasees from any and all
3 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
4 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
5 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
6 future, with respect to any alleged violations of Proposition 65 related to or arising from the
7 Covered Products manufactured, distributed, or sold by DGL, Defendant Releasees or Additional
8 Releasees. With respect to the foregoing waivers and releases in this Section, Ferreiro hereby
9 specifically waives any and all rights and benefits which he now has, or in the future may have,
10 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides
11 as follows:

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

15 5.3 DGL waives any and all claims against Ferreiro, his 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 Ferreiro and his attorneys and other representatives in the course of investigating
18 the claims in the Notice and Complaint or otherwise seeking enforcement of Proposition 65 against
19 DGL in this matter with respect to the Covered Products.

20 5.4 Ferreiro represents and warrants that as of the date of his execution of this Consent
21 Judgment he is not aware of any other Proposition 65 violations by Defendant.

22 **6. INTEGRATION**

23 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
24 any and all prior negotiations and understandings related hereto shall be deemed to have been
25 merged within it. No representations or terms of agreement other than those contained herein exist
26 or have been made by any Party with respect to the other Party or the subject matter hereof.

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1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, the Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 Peg Carew Toledo
14 PEG CAREW TOLEDO, LAW CORPORATION
15 3001 Douglas Blvd., Suite 340
 Roseville, CA 95661

16 For Ferreiro:

17 Evan Smith
18 Brodsky & Smith, LLC
 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

22 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
23 which shall be deemed an original, and all of which, when taken together, shall constitute one and
24 the same document.

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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
4 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
5 and Defendant agrees it shall support such motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
8 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
9 thirty (30) days, the case shall proceed on its normal course.

10 **11. MODIFICATION**

11 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
12 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

13 **12. ATTORNEY'S FEES**

14 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
15 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
16 the unsuccessful party has acted with substantial justification. For purposes of this Consent
17 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
18 Discovery Act of 1986, Code of Civil Procedure Section 2016.010, *et seq.*

19 **13. RETENTION OF JURISDICTION**

20 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

22 **14. AUTHORIZATION**

23 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
24 respective Parties and have read, understood and agree to all of the terms and conditions of this
25 document and certifies that he or she is fully authorized by the Party he or she represents to execute
26 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
27 explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO:

AGREED TO:

Date: _____

Date: Sept 19 2017 _____

By: _____
ANTHONY FERREIRO

By:  _____
DGL GROUP, LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 9/20/17

Date: _____

By: Anthony Ferreira
ANTHONY FERREIRO

By: _____
DGL GROUP, LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court