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

10 KAREN CALACIN,
11
12 Plaintiff,
13 vs.
14 IM BRANDS LLC, MARSHALLS OF
MA, INC., and MIWORLD
15 ACCESSORIES, LLC,
16 Defendants.

Case No. RG16821808
[PROPOSED] CONSENT JUDGMENT
Judge: Delbert C. Gee
Dept.: 302
Hearing Date: December 2, 2016
Hearing Time: 1:30 PM
Reservation #: R-1786673

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1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Karen Calacin
3 acting on behalf of the public interest (hereinafter “Calacin”) and MiWorld Accessories, LLC
4 (“MiWorld or Defendant”) with Calacin and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Calacin 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. MiWorld employs ten or more persons and
8 is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety
9 Code §§ 25249.6 et seq.

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

14 **1.3 Notices of Violation/Complaint.** On or about March 21, 2016, Calacin served
15 MiWorld, Marshalls, IM Brands, LLC, and various public enforcement agencies with a document
16 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
17 “Notice”), alleging that Defendant was in violation of Proposition 65 for failing to warn consumers
18 and customers that the *Isaac Mizrahi* luggage tags exposed users in California to DEHP. No public
19 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On June 30,
20 2016, Calacin filed a complaint in the matter as captioned above. On August 19, 2016, Calacin
21 filed a first amended complaint in the matter (“First Amended Complaint”).

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 First Amended Complaint filed in
24 this matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
25 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
26 resolution of all claims which were or could have been raised in the First Amended Complaint
27 based on the facts alleged therein and/or in the Notice.
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1 1.5 Defendant denies the material allegations contained in Calacin's Notice and First
2 Amended Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or
4 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
5 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
6 being specifically denied by Defendant. However, this section shall not diminish or otherwise
7 affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means luggage tags.

10 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
11 entered as a Judgment of the Court.

12 **3. INJUNCTIVE RELIEF: WARNINGS**

13 3.1 Commencing ninety (90) days after the Effective Date, MiWorld shall not
14 manufacture, import, or purchase for sale in California any Covered Product that contains more
15 than 1,000 parts per million DEHP, unless the Covered Product is accompanied by the following
16 warning: "WARNING: This product contains a chemical known to the State of California to cause
17 birth defects and other reproductive harm."

18 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
19 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
20 on the packaging or labeling and displayed with such conspicuousness, as compared with other
21 words, statements, or designs as to render it likely to be read and understood by an ordinary
22 individual under customary conditions of purchase or use. A warning may be contained in the same
23 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
24 concerning the use of the product and shall be at least the same size as those other safety warnings.

25 **4. MONETARY TERMS**

26 4.1 **Civil Penalty.** MiWorld shall pay a civil penalty of \$2,000.00 pursuant to Health
27 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
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1 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
2 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
3 Calacin, as provided by California Health & Safety Code § 25249.12(d).

4 4.1.1 Within ten (10) business days of the Effective Date, MiWorld shall issue
5 two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00;
6 and (b) "Brodsky & Smith, LLC in Trust for Calacin" in the amount of \$500.00. Payment owed
7 to Calacin pursuant to this Section shall be delivered to the following payment address:

8 Evan J. Smith, Esquire
9 Brodsky & Smith, LLC
10 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

13 For United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
16 P.O. Box 4010
Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

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

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

23 4.2 **Attorney Fees.** MiWorld shall pay \$23,000.00 to Brodsky & Smith, LLC ("Brodsky
24 Smith") as complete reimbursement for Plaintiff Calacin's attorneys' fees and costs incurred as a
25 result of investigating, bringing this matter to MiWorld's attention, litigating and negotiating and
26 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
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1 Procedure section 1021.5. Payment shall be made within ten (10) business days of the Effective
2 Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

3 4.3 MiWorld shall pay the civil penalty and attorney fees in Sections 4.1 and 4.2 within
4 ten (10) days of the Effective Date.

5 **5. RELEASE OF ALL CLAIMS**

6 5.1 This consent judgment is a full, final, and binding resolution between Calacin acting
7 in the public interest, and MiWorld, and its parents, shareholders, divisions, subdivisions,
8 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns (“Defendant
9 Releasees”), and all entities from whom they obtain and to whom they directly or indirectly
10 distribute or sell Covered Products, including but not limited to Marshalls, manufacturers,
11 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
12 cooperative members (“Downstream Defendant Releasees”), of all claims for violations of
13 Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with
14 respect to any Covered Products manufactured, distributed, or sold by MiWorld prior to the
15 Effective Date. Compliance with the terms of this consent judgment constitutes compliance with
16 Proposition 65 with regard to the Covered Products.

17 5.2 In addition to the foregoing, Calacin, on behalf of herself, her past and current
18 agents, representatives, attorneys, and successors and/or assignees, and not in her representative
19 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
20 legal action and releases any MiWorld, Defendant Releasees, and Downstream Defendant
21 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
22 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
23 expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed
24 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
25 to or arising from Covered Products manufactured distributed or sold by MiWorld or Defendant
26 Releasees. With respect to the foregoing waivers and releases in this paragraph, Calacin hereby
27 specifically waives any and all rights and benefits which she now has, or in the future may have,
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1 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides
2 as follows:

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

9 5.3 MiWorld waives any and all claims against Calacin, her attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Calacin and her attorneys and other representatives, whether in the course of
12 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
13 and/or with respect to Covered Products.

14 **6. INTEGRATION**

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
16 any and all prior negotiations and understandings related hereto shall be deemed to have been
17 merged within it. No representations or terms of agreement other than those contained herein exist
18 or have been made by any Party with respect to the other Party or the subject matter hereof.

19 **7. GOVERNING LAW**

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed or
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
23 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
24 to the extent that, Covered Products are so affected.

25 **8. NOTICES**

26 8.1 Unless specified herein, all correspondence and notices required to be provided
27 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
28 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
by the other party at the following addresses:

1 For Defendant:

2
3 Martin Erani
4 MiWorld Accessories, LLC
5 1 East 33rd street
6 11th Floor
7 New York, NY 10016

8 With a copy to:

9
10 Jeffrey Margulies
11 Norton Rose Fulbright US LLP
12 555 South Flower St.
13 Forty First Floor
14 Los Angeles, CA 90071

15 And

16 For Calacin:

17 Evan Smith
18 Brodsky & Smith, LLC
19 2 Bala Plaza, Suite 510
20 Bala Cynwyd, PA 19004

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

23 9. COUNTERPARTS; FACSIMILE SIGNATURES

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

27 10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT

28 APPROVAL

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

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

1 10.3 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 Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
4 its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **12. ATTORNEY'S FEES**

9 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
11 the unsuccessful party has acted with substantial justification. For purposes of this Consent
12 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
13 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

14 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
15 pursuant to law.

16 **13. RETENTION OF JURISDICTION**

17 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

19 **14. AUTHORIZATION**

20 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
21 respective Parties and have read, understood and agree to all of the terms and conditions of this
22 document and certifies that he or she is fully authorized by the Party he or she represents to execute
23 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
24 explicitly provided herein each Party is to bear its own fees and costs.
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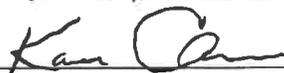
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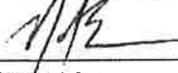
AGREED TO:

AGREED TO:

Date: 10/14/16

Date: 9/27/2016

By: 
KAREN CALACIN

By: 
MiWorld Accessories, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court