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

11 ANTHONY FERREIRO,
12 Plaintiff,

13 v.

14 WESTFIELD OUTDOOR, INC.,
15 Defendant.

Case No.: RG17849343

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 Westfield Outdoor, Inc.
4 (“Westfield” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties”
5 and 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. Westfield 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) from the *Ozark Trail Camp Sink* without
11 providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition
12 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

13 **1.3 Notices of Violation/Complaint.** On or about October 6, 2016, Ferreiro served
14 Westfield, Wal-Mart Stores, Inc., Walmart.com USA, LLC (collectively, “Walmart”), and various
15 public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to
16 Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in violation of
17 Proposition 65 for failing to warn consumers and customers that *Ozark Trail Camp Sinks* exposed
18 users in California to DEHP. No public enforcer has brought and is diligently prosecuting the
19 claims alleged in the Notice. On February 14, 2017, Ferreiro filed a complaint (the “Complaint”)
20 in the matter.

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
23 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
24 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
25 claims which were or could have been raised in the Complaint based on the facts alleged therein
26 and/or in the Notice.

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 *Camp Sinks with*
10 *Worktops* that are manufactured, distributed and/or offered for sale in California by Westfield.

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

19 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
20 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
21 on the packaging or labeling and displayed with such conspicuousness, as compared with other
22 words, statements, or designs as to render it likely to be read and understood by an ordinary
23 individual under customary conditions of purchase or use. A warning may be contained in the same
24 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
25 concerning the use of the product and shall be at least the same size as those other safety warnings.
26
27
28

1 **4. MONETARY TERMS**

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

7 4.1.1 Within fourteen (14) business days of the Effective Date, Westfield shall
8 issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of
9 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00.

10 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
11 address:

12 Evan J. Smith, Esquire
13 Brodsky & Smith, LLC
14 Two Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
24 1001 I Street
 Sacramento, CA 95814

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

1 4.2 **Attorney Fees.** Westfield shall pay \$20,500.00 to Brodsky & Smith, LLC
2 ("Brodsky Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs
3 incurred as a result of investigating, bringing this matter to Westfield's attention, litigating and
4 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
5 of Civil Procedure section 1021.5. Payment shall be made within fourteen (14) business days of
6 the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

7 4.3 Westfield shall pay the civil penalty and attorney fees in Sections 4.1 and 4.2 within
8 fourteen (14) days of the Effective Date.

9 **5. RELEASE OF ALL CLAIMS**

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

1 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
2 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases any Westfield, Defendant Releasees, and Downstream Releasees from any
5 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
9 from Covered Products manufactured distributed or sold by Westfield, Defendant Releasees or
10 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
11 Ferreiro hereby specifically waives any and all rights and benefits which he or she now has, or in
12 the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil
13 Code, which provides as follows:
14

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

18 5.3 Westfield waives any and all claims against Ferreiro, his attorneys and other
19 representatives, for any and all actions taken or statements made (or those that could have been
20 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
22 and/or with respect to Covered Products.

23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.
28

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 Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, 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 Gary A. Wexler
14 Thompson Coburn LLP
15 2029 Century Park East
16 19th Floor
17 Los Angeles, CA 90067

18 And

19 For Ferreiro:

20 Evan Smith
21 Brodsky & Smith, LLC
22 9595 Wilshire Blvd., Ste. 900
23 Beverly Hills, CA 90212

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
28 which shall be deemed an original, and all of which, when taken together, shall constitute one and
the same document.

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 approval of 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 30 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
20 the unsuccessful party has acted with substantial justification. For purposes of this Consent
21 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
22 Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

23 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
24 pursuant to law.

25 **13. RETENTION OF JURISDICTION**

26 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.
28

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

AGREED TO:

By: Anthony Ferreira By: _____
ANTHONY FERREIRO WESTFIELD OUTDOOR, INC.

Dated: _____ Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 document and certifies that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.
7

8 **AGREED TO:**

AGREED TO:

9
10 Date: _____

Date: 3/6/2017

11 By: _____

By: [Signature], CEO

12 ANTHONY FERREIRO

WESTFIELD OUTDOOR, INC.

13
14 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

15
16 Dated: _____

Judge of Superior Court