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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,

11 Plaintiff,

12 v.

13 NOTIONS MARKETING, CORP.,

14 Defendant.

Case No.: RG17860162

CONSENT JUDGMENT

Judge: Sandra K. Bean

Dept.: 301

Hearing Date: July 24, 2017

Hearing Time: 2:30 PM

Reservation #: R-1857192

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 Notions Marketing,
4 Corp. (“Notions Marketing” or “Defendant”) with Ferreiro and Defendant collectively referred to
5 as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California who
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
7 or eliminating hazardous substances contained in consumer products. Notions Marketing is a
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

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

14 **1.3 Notices of Violation/Complaint.** On or about February 17, 2017, Ferreiro served
15 Notions Marketing, as well as Wal-Mart Stores, Inc., Walmart.comUSA, LLC (collectively,
16 “Walmart”), and various public enforcement agencies with a document entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 was in violation of Proposition 65 for failing to warn consumers and customers that See Your Stuff
19 Storage Bags exposed users in California to DEHP. No public enforcer has brought and is diligently
20 prosecuting the claims alleged in the Notice. On May 11, 2017, Ferreiro filed a complaint in the
21 matter as captioned above (the “Complaint”).

22 **1.4 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
23 stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the
24 Complaint filed in this matter, that venue is proper in the County of Alameda, and that this Court
25 has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full
26 and final binding resolution of all claims which were or could have been raised in the Complaint
27 based on the facts alleged therein and/or in the Notice.
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1 1.5 **No Admission.** Defendant denies the factual, legal, and material allegations
2 contained in Ferreiro’s Notice and Complaint and maintains that it has sold and distributed for sale
3 in California, including the Products, which have been, and are, in compliance with all laws.
4 Notions Marketing specifically maintains that it has not violated Proposition 65. Nothing in this
5 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of
6 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed
7 as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law,
8 such being specifically denied by Defendant. However, this section shall not diminish or otherwise
9 affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term “Covered Products” means See Your Stuff Storage
12 Bags, including but not limited to UPC No. 7 66516 14001 1, that have been purchased for sale,
13 distributed, sold, and/or offered for sale in California by Notions Marketing and/or Walmart, and
14 that contain DEHP. The Covered Products contemplated by this Agreement are intended to include
15 any additional SKU’s or permutation of the Covered Products related to color, size, configuration,
16 and/or any similar Covered Product line or extension thereof.

17 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
18 entered as a Judgment of the Court.

19 **3. INJUNCTIVE RELIEF: WARNINGS**

20 3.1 Commencing ninety (90) days after the Effective Date, Notions Marketing shall not
21 manufacture, import, or purchase for sale in California any Covered Product that contains more
22 than 1,000 parts per million DEHP, unless the Covered Product is accompanied by the following
23 warning: “WARNING: This product can expose you to chemicals including Di(2-ethylhexyl)
24 phthalate, which is known to the State of California to cause cancer and birth defects or other
25 reproductive harm. For more information go to www.P65Warnings.ca.gov.”

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

6 **4. MONETARY TERMS**

7 4.1 **Civil Penalty.** Notions Marketing shall pay a civil penalty of \$3,000.00 pursuant to
8 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
9 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
10 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
11 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

12 4.1.1 Within ten (10) business days of the Effective Date, Notions Marketing
13 shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of
14 \$2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$750.00.

15 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
16 address:

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

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

22 For United States Postal Service Delivery:

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

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

4.2 **Attorney Fees.** Notions Marketing shall pay \$27,000.00 to Brodsky & Smith, LLC (“Brodsky Smith”) as complete reimbursement for Plaintiff Ferreiro’s attorneys’ fees and costs incurred as a result of investigating, bringing this matter to Notions Marketing’s attention, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5. Payment shall be made within ten (10) business days of the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

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

5. RELEASE OF ALL CLAIMS

5.1 **Ferreiro’s Public Release of Proposition 65 Claims.** This Consent Judgment is a full, final, and binding resolution between Ferreiro acting on his own behalf and in the public interest, and constitutes a full and binding release as to Notions Marketing, Walmart.com USA LLC and Wal-Mart Stores, Inc. and their its respective parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, marketplace hosts, franchisees, and cooperative members (“Downstream Defendant Releasees”), of all claims for violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by Notions Marketing prior to the Effective Date. Specifically excluded from Ferreiro’s public release of Proposition 65 claims as is contemplated by this Section is Lyle Enterprises, Inc., who is not contemplated as a Downstream Defendant Releasee for purposes of this Consent Judgment, and to

1 whom this Consent Judgment is intended to specifically excluded from the protections, and releases
2 bestowed upon the Downstream Defendant Releasees. Compliance with the terms of this Consent
3 Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

4 **5.2 Ferreiro’s Individual Release of Claims.** Ferreiro, in his individual capacity only
5 and not in his representative capacity, also provides a release to Notions Marketing, the other
6 Defendant Releasees, and Downstream Defendant Releasees. Lyle Enterprises, Inc. is specifically
7 excluded from Ferreiro’s individual release of claims as is contemplated by this Section. In addition
8 to the foregoing, Ferreiro, on behalf of himself, his past and current agents, representatives,
9 attorneys, and successors and/or assignees, and not in his representative capacity, hereby waives
10 all rights to institute or participate in, directly or indirectly, any form of legal action and releases
11 any Notions Marketing, Defendant Releasees, and Downstream Defendant Releasees from any and
12 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
13 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
14 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
15 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
16 Products manufactured, distributed or sold by Notions Marketing or Defendant Releasees, and
17 Downstream Defendant Releasees. Ferreiro reserves all rights to institute or participate in, directly
18 or indirectly, any form of legal action against Lyle Enterprises, Inc. with respect to alleged
19 violations of Proposition 65 relating to, or arising from the Covered Products. With respect to the
20 foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all
21 rights and benefits which he now has, or in the future may have, conferred by virtue of the
22 provisions of Section 1542 of the California Civil Code, which provides as follows:

23
24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
26 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
27 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
28 THE DEBTOR.

1 5.3 By executing this Consent Judgment, Ferreiro understands and acknowledges that
2 the significance and consequence of this waiver of California Civil Code Section 1542 is that even
3 if Ferreiro suffers future damages arising out of or resulting from, or related directly or indirectly
4 to, in whole or in part, the Covered Products, including but not limited to any exposure to, or failure
5 to warn with respect to exposure to DEHP from the Covered Products, Ferreiro will not be able to
6 make any claim for those damages against Notions Marketing, Defendant Releasees, and
7 Downstream Defendant Releasees, and the successors and assigns of any of them, who may
8 manufacture, use, maintain, distribute, retail or sell the Covered Products. Furthermore, Ferreiro
9 acknowledges that it intends these consequences for any such claims and any other claims which
10 may exist as of the date of this release pertaining to the Covered Products listed in the Notice but
11 which Ferreiro does not know exist, and which, if known, would materially affect its decision to
12 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of
13 ignorance, oversight, error, negligence, or any other cause.

14 5.4 **Notions' Release of Claims Against Ferreiro.** Notions Marketing waives any and
15 all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken or
16 statements made (or those that could have been taken or made) by Ferreiro and his attorneys and
17 other representatives, whether in the course of investigating claims or otherwise seeking
18 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

19 **6. INTEGRATION/ENTIRE AGREEMENT**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
21 any and all prior negotiations and understandings related hereto shall be deemed to have been
22 merged within it. No representations or terms of agreement other than those contained herein exist
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

24 **7. GOVERNING LAW**

25 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California and apply within the State of California. In the event that Proposition 65 is repealed or
27 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
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1 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
2 to the extent that, Covered Products are so affected.

3 **8. NOTICES**

4 8.1 Unless specified herein, all correspondence and notices required to be provided
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
6 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
7 by the other party at the following addresses:

8 For Defendant:

9 Mark S. Pendery
10 Miller Johnson Attorneys
11 45 Ottawa Ave. SW
12 Suite 1100
13 P.O. Box 306
14 Grand Rapids, MI 49051-0306

15 And

16 For Ferreiro:

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 Ferreiro 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.

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
3 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
4 30 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. SEVERABILITY**

13 12.1 If, subsequent to the Court's approval and entry of this Consent Judgment as a
14 judgment, any provision is held to be unenforceable, the validity of the remaining provisions shall
15 not be adversely affected.

16 **13. ATTORNEY'S FEES**

17 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
18 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
19 the unsuccessful party has acted with substantial justification. For purposes of this Consent
20 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
21 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

22 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
23 pursuant to law.

24 **14. RETENTION OF JURISDICTION**

25 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
26 Consent Judgment.

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15. AUTHORIZATION

15.1 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:

AGREED TO:

Date: 6/2/17
By: Anthony Ferreiro
ANTHONY FERREIRO

Date: March 23rd, 2017
By: JG Pitonpal
NOTIONS MARKETING, CORP.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of Superior Court