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

12 ANTHONY FERREIRO,
13 Plaintiff,

14 v.

15 NEW STAR FOODSERVICE, INC.,
16 Defendant.

Case No.: RG18892198

CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: June 14, 2018

Hearing Time: 3:45 PM

Reservation #: R-1957395

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

10 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to Bisphenol A (BPA) from its sales of New Star Dredge Shakers without providing
12 clear and reasonable warnings under Proposition 65. BPA is listed under Proposition 65 as a
13 chemical known to the State of California to cause reproductive toxicity.

14 1.3 **Notice of Violation/Complaint.** On or about March 23, 2017, Ferreiro served
15 New Star Foodservice and various public enforcement agencies with a document entitled “60-
16 Day Notice of Violation” pursuant to Health & Safety Code § 25249.7(d) (the “Notice”), alleging
17 that Defendant was in violation of Proposition 65 for failing to warn consumers and customers
18 that sales of New Star Dredge Shakers exposes users in California to BPA. No public enforcer
19 has brought and is diligently prosecuting the claims alleged in the Notice. On February 6, 2018,
20 Ferreiro filed a complaint in the matter (the “Complaint”) in Alameda County Superior Court as
21 *Ferriero v. New Star Foodservice, Inc.*, case no. RG18892198 (the “Action”).

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
23 has jurisdiction over Defendant as to the allegations contained in the Complaint filed in this
24 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 Complaint based on the facts
27 alleged therein 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
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
5 an 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 New Star Dredge
10 Shakers that are manufactured, distributed and/or offered for sale in California by New Star
11 Foodservice or third parties, and that contain or are alleged to contain BPA.

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

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 Commencing ninety (90) days after the Effective Date, New Star Foodservice
16 agrees to manufacture, import, or purchase for sale in California only (a) Reformulated Covered
17 Products pursuant to Section 3.2, or (b) Covered Products that are accompanied by either of the
18 following warnings:

19 “WARNING: This product contains a chemical known to the State of California to cause
20 [cancer,] birth defects or other reproductive harm.”

21 Or

22 “WARNING: This product can expose you to chemicals including Bisphenol A (BPA),
23 which is known to the State of California to cause [cancer and] birth defects or other
24 reproductive harm. For more information go to www.P65Warnings.ca.gov.”

25 The bracketed text may, but is not required to be used. New Star Foodservice and its
26 downstream retailers shall have no obligation to reformulate or label Covered Product that
27 entered the stream of commerce prior to the Effective Date or within ninety (90) days after the
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1 Effective Date. Notwithstanding anything to the contrary in this Consent Judgment, in the event
2 that the Office of Environmental Health Hazard Assessment promulgates one or more regulations
3 requiring or permitting warning text and/or methods of transmission different than those set forth
4 in this Consent Judgment, New Star shall be entitled to use, at its discretion, such other warning
5 text and/or method of transmission without being deemed in breach of this Consent Judgment.
6 For purposes of this Consent Judgment, a “Reformulated Covered Product” is Covered Product
7 that meets the standard set forth in Section 3.2, below.

8 3.2 “Reformulated Covered Product” shall mean Covered Product that is BPA-Free
9 when analyzed pursuant to ATS 367 Rev. 0 by LC/MS/MS.

10 3.3 The warning provided pursuant to § 3.1 above shall be affixed to or printed on the
11 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
12 on the packaging or labeling and displayed with such conspicuousness, as compared with other
13 words, statements, or designs as to render it likely to be read and understood by an ordinary
14 individual under customary conditions of purchase or use. A warning may be contained in the
15 same section of the packaging, labeling, or instruction booklet that states other safety warnings, if
16 any, concerning the use of the product and shall be at least the same size as those other safety
17 warnings.

18 **4. MONETARY TERMS**

19 4.1 **Civil Penalty.** New Star Foodservice shall pay a Civil Penalty of \$1,000.00
20 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
21 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
22 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
23 25% of the penalty remitted to Ferreiro, as provided by California Health & Safety Code
24 § 25249.12(d).

25 4.1.1 Within ten (10) days of the Effective Date, New Star Foodservice shall
26 issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of
27 \$750.00; and (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$250.00.
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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

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

8 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

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

18 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, New Star
19 Foodservice shall pay \$18,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete
20 reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a result of
21 investigating, bringing this matter to New Star Foodservice's attention, litigating and negotiating
22 and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
23 Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
26 acting in the public interest, and New Star Foodservice, and its parents, shareholders, divisions,
27 subdivisions, subsidiaries, partners, sister companies, agents, employees, officers, directors, and
28

1 affiliates, and their predecessors, successors and assigns (collectively with New Star Foodservice,
2 “Defendant Releasees”), and all entities from whom they obtain and to whom they directly or
3 indirectly distribute or sell Covered Products, including but not limited to Amazon.com, Inc.,
4 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
5 marketplace hosts, franchisees, and cooperative members (collectively, “Downstream Defendant
6 Releasees”), of any and all claims for violations of Proposition 65 based on actual or alleged
7 exposure to BPA from Covered Products as set forth in the Notice or any Covered Products
8 manufactured, distributed, offered for sale, or sold by New Star Foodservice, any Defendant
9 Releasees, or any Downstream Defendant Releasees at any time on or before the date which is
10 ninety (90) days after the Effective Date. Compliance with the terms of this Consent Judgment
11 constitutes compliance with Proposition 65 with regard to the Covered Products.

12 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
13 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
14 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
15 legal action and releases any New Star Foodservice, Defendant Releasees, and Downstream
16 Defendant Releasees from any and all manner of actions, causes of action, claims, demands,
17 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,
18 losses, costs, expenses, expert fees, investigation fees, lab fees, and attorneys’ fees, of any nature
19 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
20 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
21 manufactured, distributed, offered for sale, or sold by New Star Foodservice, any Defendant
22 Releasees, or any Downstream Defendant Releasees and/or any and all claims made (or those that
23 could have been made) in the Complaint or the Action. With respect to the foregoing waivers and
24 releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits
25 which he now has, or in the future may have, conferred by virtue of the provisions of Section
26 1542 of the California Civil Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR

1 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
2 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
3 THE DEBTOR.

3 5.3 New Star Foodservice waives any and all claims against Ferreiro, his attorneys and
4 other representatives, for any and all actions taken or statements made (or those that could have
5 been taken or made) by Ferreiro and his attorneys and other representatives with respect to the
6 Notice, Complaint, and Action, whether in the course of investigating claims or otherwise seeking
7 enforcement of Proposition 65 against it in this matter, and/or with respect to actual or alleged
8 exposure to BPA from the Covered Products manufactured, distributed, offered for sale, or sold
9 by New Star Foodservice, Defendant Releasees, or any Downstream Defendant Releasees.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
12 any and all prior negotiations and understandings related hereto shall be deemed to have been
13 merged within it. No representations or terms of agreement other than those contained herein
14 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

15 **7. GOVERNING LAW**

16 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California and apply within the State of California. In the event that Proposition 65 is repealed or
18 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
19 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to,
20 and to the extent that, Covered Products are so affected.

21 **8. NOTICES**

22 8.1 Unless specified herein, all correspondence and notices required to be provided
23 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
24 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
25 party by the other party at the following addresses:

26 For Defendant:

27 New Star Foodservice, Inc.
28 16397 Fern Ave.
Chino, CA 91708

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And

For Ferreiro:

Evan Smith
Brodsky & Smith, LLC
2 Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

11. MODIFICATION

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

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12. ATTORNEY'S FEES

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

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

13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

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:

AGREED TO:

Date: 4/24/18
By: Anthony Ferreiro
ANTHONY FERREIRO

Date: 04/20/2018
By: [Signature]
NEW STAR FOODSERVICE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of Superior Court