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

12 ANTHONY FERREIRO,
13 Plaintiff,

14 v.

15 WAXMAN CONSUMER PRODUCTS GROUP,
16 INC.,
17 Defendant.

Case No.: RG17860579

CONSENT JUDGMENT

Judge: Dennis Hayashi

Dept.: 303

Hearing Date: October 12, 2017

Hearing Time: 2:30 PM

Reservation #: R-1871770

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 Waxman Consumer
4 Products Group, Inc. (“Waxman” or “Defendant”) with Ferreiro and Defendant collectively
5 referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in
6 California who seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Waxman
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.** Ferreiro alleges that Defendant has exposed
11 individuals to a chemical known to the State of California to cause cancer and reproductive toxicity
12 from Plumb Craft Hose Adapters without providing clear and reasonable warnings under
13 Proposition 65.

14 **1.3 Notices of Violation/Complaint.** On or about March 31, 2017, Ferreiro served
15 Waxman and various public enforcement agencies with a document entitled “60-Day Notice of
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
17 was in violation of Proposition 65 for failing to warn consumers and customers that Plumb Craft
18 Hose Adapters exposed users in California to a chemical known to the State of California to cause
19 cancer and reproductive toxicity. No public enforcer has brought and is diligently prosecuting the
20 claims alleged in the Notice. On May 17, 2017, Ferreiro filed a complaint in the matter as
21 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.
28

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 Waxman specifically maintains that it has not violated Proposition 65. Nothing in this Consent
5 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or
6 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
7 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
8 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 Plumb Craft Hose
12 Adapters including but not limited to UPC No. 028905741026 that have been manufactured,
13 distributed, sold, and/or offered for sale in California by Waxman, and that contain a chemical
14 known to the State of California to cause cancer and reproductive toxicity.

15 **2.2 Effective Date.** The term "Effective Date" means the date this Consent Judgment is
16 entered as a Judgment of the Court.

17 **3. INJUNCTIVE RELIEF: WARNINGS**

18 **3.1** Commencing ninety (90) days after the Effective Date, Waxman shall not
19 manufacture, import, distribute, sell or offer for sale in California any Covered Product unless the
20 Covered Product is accompanied by the following warning, operative on August 30, 2018:
21 "WARNING: This product can expose you to chemicals including lead, which are known to the
22 State of California to cause cancer and birth defects or other reproductive harm. For more
23 information go to www.P65Warnings.ca.gov." Prior to August 30, 2018, Waxman also complies
24 with its obligation in this Section if the Covered Product instead is accompanied by the following
25 warning: "WARNING: This product contains chemicals known to the state of California to cause
26 cancer and birth defects or other reproductive harm."
27
28

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

8 **4. MONETARY TERMS**

9 4.1 **Initial Civil Penalty.** Waxman shall pay a Initial Civil Penalty of \$1,000.00
10 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
11 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
12 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the
13 penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

14 4.1.1 Within ten (10) business days of the Effective Date, Waxman shall issue two
15 separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$750.00; and (b)
16 "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$250.00. Payment owed to Ferreiro
17 pursuant to this Section shall be delivered to the following payment address:

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

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

23 For United States Postal Service Delivery:

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

27 For Non-United States Postal Service Delivery:
28

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

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

8 4.2 **Final Civil Penalty.** Ninety (90) days after the Effective Date, Waxman shall make
9 a Final Civil Penalty payment of \$1,000.00 on the same terms as set forth in § 4.1.1 pertaining to
10 the Initial Civil Penalty. Pursuant to Title 11 California Code of Regulations, Section 3203(c),
11 Ferreiro agrees that the Final Civil Penalty payment shall be waived in its entirety if, on or before
12 the date the Final Civil Penalty payment is due, an officer of Waxman provides Ferreiro with a
13 signed declaration certifying that all Products it ships for sale or distributes for sale in California as
14 of the date of its certification have been marked with the warnings required by this Consent Decree
15 (hereinafter "Labeled Product") and that Waxman will continue to offer only Labeled Products in
16 California in the future. The option to provide a declaration certifying its complete early
17 reformulation or labeling of the Products in lieu of making the Final Civil Penalty payment
18 otherwise required by this Section is a material term, and time is of the essence.

19 4.3 **Attorney Fees.** Waxman shall pay \$14,000.00 to Brodsky & Smith, LLC ("Brodsky
20 Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a
21 result of investigating, bringing this matter to Waxman's attention, litigating and negotiating and
22 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
23 Procedure section 1021.5. Payment shall be made within ten (10) business days of the Effective
24 Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

25 4.4 Waxman shall pay the civil penalty and attorney fees in Sections 4.1 and 4.2 within
26 ten (10) days of the Effective Date.

27 **5. RELEASE OF ALL CLAIMS**

28 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

1 interest, and constitutes a full and binding release as to Waxman, and its parents, shareholders,
2 divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors
3 and assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they
4 directly or indirectly distribute or sell Covered Products, including but not limited to Walmart.Com
5 USA LLC, Walmart Stores, Inc., manufacturers, suppliers, distributors, wholesalers, customers,
6 licensors, licensees retailers, franchisees, and cooperative members ("Downstream Defendant
7 Releasees"), of all claims for violations of Proposition 65 with respect to any Covered Products
8 manufactured, distributed, or sold by Waxman prior to the Effective Date. Compliance with the
9 terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the
10 Covered Products.

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

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

1 THE DEBTOR.

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

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

21 **6. INTEGRATION/ENTIRE AGREEMENT**

22 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and any
23 and all prior negotiations and understandings related hereto shall be deemed to have been merged
24 within it. No representations or terms of agreement other than those contained herein exist or have
25 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 is
4 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)
10 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
11 party by the other party at the following addresses:

12 For Defendant:

13 Eric L. Zalud
14 Benesch, Friedlander, Coplan & Aronoff LLP
15 200 Public Square, Suite 2300
 Cleveland, Ohio 44114-2378

16 And

17 For Ferreiro:

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

21 Any party, from time to time, may specify in writing to the other party a change of address to which
22 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.

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

14. RETENTION OF JURISDICTION

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

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: _____

Date: JUNE 26, 2017

By: _____

ANTHONY FERREIRO

By: Nash Uster

WAXMAN CONSUMER PRODUCTS
GROUP, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **14. RETENTION OF JURISDICTION**

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5 Consent Judgment.

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12 explicitly provided herein each Party is to bear its own fees and costs.

13
14 **AGREED TO:**

AGREED TO:

15 Date: 8/25/17

Date: _____

16
17 By: Anthony Ferreiro
18 ANTHONY FERREIRO

By: _____
WAXMAN CONSUMER PRODUCTS
GROUP, INC.

19
20 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

21
22 Dated: _____

Judge of Superior Court