

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH, LLC.
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 GLP STORES, LLC,

15 Defendant.

Case No.: RG18897260

CONSENT JUDGMENT

Judge: Dennis Hayashi

Dept.: 518

Hearing Date: August 29, 2018

Hearing Time: 2:30 PM

Reservation #: R-1967782

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 GLP Stores, LLC (“GLP
4 Stores” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Ferreiro is an individual residing in California that 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. GLP Stores is alleged to be a person in the
8 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et
9 seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to Diisononyl phthalate (DINP) from its sales of Icarus chair covers without providing
12 clear and reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a
13 chemical known to the State of California to cause cancer.

14 **1.3 Notice of Violation/Complaint.** On or about April 5, 2017, Ferreiro served GLP
15 Stores, and various public enforcement agencies with documents 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 sales of Icarus
18 chair covers has exposed users in California to DINP. No public enforcer has brought and is
19 diligently prosecuting the claims alleged in the Notices. On March 19, 2018, Ferreiro filed a
20 complaint (the “Complaint”) 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.

1.5 Defendant denies the material allegations contained in Ferreiro's Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

2. **DEFINITIONS**

2.1 **Covered Products.** The term "Covered Products" means Icarus chair covers that are manufactured, distributed, sold and/or offered for sale in California by GLP Stores.

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

3. **INJUNCTIVE RELIEF: WARNINGS**

3.1 As of the date this Consent Judgment is signed by both Parties, GLP Stores, shall not manufacture or order from any supplier any Covered Products intended for retail sale in California that contains DINP on any component to which consumers are exposed in excess of 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Covered Product is accompanied by a warning that complies with Article 6 of Title 27 of the California Code of Regulations. Covered Products sold by GLP Stores, before the date this Consent Judgment is signed by both Parties may sell through without a warning even if not Reformulated Products. Until August 30, 2018, the warning shall consist of either:

- (a) The statement: "**WARNING:** This product contains a chemical known to the State of California to cause cancer."; or (b) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline to the left of the word "warning" in bold all capital letters, followed by the statement "This product can expose you to chemicals including Diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more information, go to www.P65Warnings.ca.gov."; or (c) a symbol

1 consisting of a black exclamation point in a yellow equilateral triangle with a bold black
2 outline to the left of the word “warning” in bold all capital letters, followed by the statement
3 “Cancer- www.P65Warnings.ca.gov.”¹

4 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section
5 3.1(b) or 3.1(c) shall be used.

6 3.2 Any warning provided pursuant to Section 3.1(a) or 3.1(b) shall be affixed to or
7 printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic
8 device or automatic process. Any warning provided pursuant to Section 3.1(c) shall be on the
9 Covered Product’s label.

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

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** GLP Stores, shall pay \$500.00 as a Civil Penalty pursuant to Health
18 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
19 Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of
20 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty
21 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

22 4.1.1 Within fourteen (14) days of the date this Agreement is entered as a
23 Judgment by the Court, GLP Stores, shall issue two separate checks for the Civil Penalty payment
24 to (a) “OEHHA” in the amount of \$375.00; and to (b) “Brodsky & Smith, LLC in Trust for
25

26
27 ¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 Ferreiro” in the amount of \$125.00. Payment owed to Ferreiro pursuant to this Section shall be
2 delivered to the following payment 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 address
17 set forth above as proof of payment to OEHHA.

18 4.2 **Attorneys’ Fees.** Within fourteen (14) days of the date this Agreement is entered as
19 a Judgment by the Court, GLP Stores, shall pay \$12,000.00 to Brodsky & Smith, LLC (“Brodsky
20 Smith”) as complete reimbursement for Ferreiro’s attorneys’ fees and costs incurred as a result of
21 investigating, bringing this matter to GLP Stores’ attention, litigating and negotiating and obtaining
22 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section
23 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 on his own behalf, and on behalf of the public interest, and GLP Stores, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28

1 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
2 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
3 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
4 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
5 retailers, franchisees, and cooperative members, including but not limited to Wal-Mart Stores, Inc.
6 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
7 DINP from Covered Products as set forth in the Notice, with respect to any Covered Products
8 manufactured, distributed, or sold by GLP Stores, prior to the Effective Date or within ninety (90)
9 days after the Effective Date. This Consent Judgment shall have preclusive effect such that no
10 other person or entity, whether purporting to act in his, her, or its interests or the public interest
11 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65
12 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against
13 GLP Stores, or its Downstream Releasees of the Product including but not limited to ("Proposition
14 65 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
15 Proposition 65 with regard to the Covered Products.

16 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
17 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
18 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action and releases GLP Stores, Defendant Releasees, and Downstream Releasees from any
20 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
21 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
22 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
23 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
24 from Covered Products manufactured, distributed, or sold by GLP Stores, Defendant Releasees or
25 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
26 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
27
28

1 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
2 which provides as follows:

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

8 5.3 GLP Stores, waives any and all claims against Ferreiro, his attorneys and other
9 representatives, for any and all actions taken or statements made (or those that could have been
10 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
11 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
12 and/or with respect to Covered Products.

13 6. INTEGRATION

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

18 7. GOVERNING LAW

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

24 8. NOTICES

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

1 For Defendant:

2 GLP Stores, LLC
3 Nguu A. Phang
4 5980 88th Street
Sacramento, CA 95828

5 And

6 For Ferreiro:

7 Evan Smith
8 Brodsky & Smith, LLC
9 9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

13 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
14 which shall be deemed an original, and all of which, when taken together, shall constitute one and
15 the same document.

16 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
17 **APPROVAL**

18 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
19 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
20 Defendant agrees it shall support approval of such Motion.

21 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
22 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
23 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
24 30 days, the case shall proceed on its normal course.

25 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
26 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
27 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
28 its normal course on the trial court's calendar.

1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either
4 Party.

5 **12. ATTORNEY'S FEES**

6 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
7 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

8 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
9 pursuant to law.

10 **13. RETENTION OF JURISDICTION**

11 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

13 **14. AUTHORIZATION**

14 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
15 their respective Parties and have read, understood and agree to all of the terms and conditions of
16 this document and certify that he or she is fully authorized by the Party he or she represents to
17 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
18 Except as explicitly provided herein each Party is to bear its own fees and costs.

19
20 **AGREED TO:**

AGREED TO:

21 Date: July 10, 18
22 By: Anthony Ferrero
23 ANTHONY FERRERO

Date: 5-24-2019
By: [Signature]
GLP STORES, LLC

24
25
26 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

27
28 Dated: _____