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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 MAMBATE USA, INC.,  
15 Defendant.

Case No.: RG18898859  
**CONSENT JUDGMENT**  
Judge: Evelio Grillo  
Dept.: 15  
Hearing Date: December 14, 2018  
Hearing Time: 10:00 AM  
Reservation #: R-2002742

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 Mambte USA, Inc.  
4           (“Mambate” 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 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. Mambate 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 Di(2-ethylhexyl) phthalate (DEHP) from its sales of Mambate’s waterproof floating  
12           water resistant dry bags without providing a clear and reasonable exposure warning pursuant to  
13           Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California  
14           to cause cancer and reproductive toxicity.

15           1.3     **Notice of Violation/Complaint.** On or about June 23, 2017, Ferreiro served  
16           Mambate and various public enforcement agencies with documents entitled “60-Day Notice of  
17           Violation” pursuant to Health & Safety Code § 25249.7(d) (the “Notice”), alleging that Defendant  
18           violated Proposition 65 for failing to warn consumers and customers that use of Defendant’s  
19           waterproof floating water resistant dry bags exposes users in California to DEHP. No public  
20           enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On March 28,  
21           2018, Ferreiro filed a complaint (the “Complaint”) in the matter.

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

1  
2 1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and  
3 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
4 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
5 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
6 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
7 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
8 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Agptek dry/waterproof  
11 bags that are manufactured, distributed and/or offered for sale in California by Mambate

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

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 As of the date this Consent Judgment is signed by both Parties, Mambate shall not  
16 manufacture or order from any supplier any Covered Products intended for retail sale in California  
17 that contains DEHP on any component to which consumers are exposed in excess of 0.1% (1,000  
18 ppm) (hereinafter “Reformulated Products”) unless the Covered Product is accompanied by a  
19 warning that complies with Article 6 of Title 27 of the California Code of Regulations. Covered  
20 Products sold by Mambate before the date this Consent Judgment is signed by both Parties may  
21 sell through without a warning even if not Reformulated Products. Until August 30, 2018, the  
22 warning shall consist of either:

23 (a) The statement: “WARNING: This product contains a chemical known to the State of  
24 California to cause cancer and birth defects or other reproductive harm.”; or

25 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle  
26 with a bold black outline to the left of the word “**WARNING**” in bold all capital letters,  
27 followed by the statement “This product can expose you to chemicals including Di(2-  
28 ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and

1 birth defects or other reproductive harm. For more information, go to  
2 www.P65Warnings.ca.gov.”; or (2) a warning consisting of a symbol that is a black  
3 exclamation point in a yellow equilateral triangle with a bold black outline to the left of the  
4 word “**WARNING**” in bold all capital letters, followed by the statement “Cancer and  
5 Reproductive Harm - www.P65Warnings.ca.gov.”<sup>1</sup>

6 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section  
7 3.1(b) shall be used.

8 3.2 The warning provided pursuant to § 3.1 shall be affixed to or printed on the Covered  
9 Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic  
10 process, providing that the warning is displayed with such conspicuousness, as compared with other  
11 words, statements, or designs as to render it likely to be read and understood by an ordinary  
12 individual under customary conditions of purchase or use. A warning may be contained in the same  
13 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,  
14 concerning the use of the product and shall be at least the same size as those other safety warnings.

15 **4. MONETARY TERMS**

16 4.1 **Civil Penalty.** Mambate shall pay \$1,500.00 as a Civil Penalty pursuant to Health  
17 and Safety Code § 25249.7(b), to be apportioned in accordance with California Health & Safety  
18 Code § 25192, with 75% of these funds remitted to the State of California’s Office of  
19 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty  
20 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within ten (10) days of the Effective Date, Mambate shall issue two  
22 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,125.00; and  
23 to (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$375.00. Payment owed to  
24 Ferreiro pursuant to this Section shall be delivered to the following payment address:

25 Evan J. Smith, Esquire  
26 Brodsky & Smith, LLC

27 <sup>1</sup> 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 Two Bala Plaza, Suite 510  
2 Bala Cynwyd, PA 19004

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

5 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

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

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

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Mambate shall pay  
20 \$13,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's  
21 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Mambate's  
22 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
23 interest, pursuant to Code of Civil 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 on his own behalf, and on behalf of the public interest, and Mambate, and its parents,  
27 shareholders, members, directors, officers, managers, employees, representatives, agents,  
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
predecessors, 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, franchisees, and cooperative members, including but not limited to Walmart, Inc.,

1 Walmart.com USA, LLC and Wal-Mart Stores, Inc. (“Downstream Releasees”), of all claims for  
2 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the  
3 Notice, with respect to any Covered Products manufactured, distributed, or sold by Mambate prior  
4 to the Effective Date. This Consent Judgment shall have preclusive effect such that no other person  
5 or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted  
6 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
7 the Complaint, or that could have been brought pursuant to the Notice against Mambate or its  
8 Downstream Releasees of the Product (“Proposition 65 Claims”). Compliance with the terms of  
9 this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered  
10 Products.

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

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

1           5.3     Mambate waives any and all claims against Ferreiro, his attorneys and other  
2 representatives, for any and all actions taken or statements made (or those that could have been  
3 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
5 and/or with respect to Covered Products.

6           **6.     INTEGRATION**

7           6.1     This Consent Judgment contains the sole and entire agreement of the Parties and  
8 any and all prior negotiations and understandings related hereto shall be deemed to have been  
9 merged within it. No representations or terms of agreement other than those contained herein exist  
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11          **7.     GOVERNING LAW**

12          7.1     The terms of this Consent Judgment shall be governed by the laws of the State of  
13 California and apply within the State of California. In the event that Proposition 65 is repealed or  
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
16 to the extent that, Covered Products are so affected.

17          **8.     NOTICES**

18          8.1     Unless specified herein, all correspondence and notices required to be provided  
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
21 by the other party at the following addresses:

22          For Defendant:

23                 Jing Y. Li  
24                 Solomon Ward Seidenwurm Smith, LLP  
25                 401 B Street, Suite 1200  
26                 San Diego, CA 92101

26          And

27          For Ferreiro:

28                 Evan Smith

1 Brodsky & Smith, LLC  
2 9595 Wilshire Blvd., Ste. 900  
3 Beverly Hills, CA 90212

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

6 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

7 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
8 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
9 the same document.

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

11 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
12 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
13 Defendant agrees it shall support approval of such Motion.

14 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
15 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
16 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
17 30 days, the case shall proceed on its normal course.

18 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
19 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
20 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
21 its normal course on the trial court's calendar.

22 **11. MODIFICATION**

23 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
24 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

25 **12. ATTORNEY'S FEES**

26 12.1 Each party agrees to bear its own attorney's fees and costs.

27 12.2 A Party who unsuccessfully brings or contests an action arising out of this Consent  
28 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.



1 12.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
8 respective Parties and have read, understood and agree to all of the terms and conditions of this  
9 document and certify that he or she is fully authorized by the Party he or she represents to execute  
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
11 explicitly provided herein each Party is to bear its own fees and costs.  
12

13 **AGREED TO:**

**AGREED TO:**

14 Date: 10/25/18

Date: 8-21-2018

15 By: Anthony Ferreiro  
16 ANTHONY FERREIRO

15 By: [Signature]  
16 MAMBATE USA, INC.

17  
18  
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court