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SUPERIOR COURT OF THE STATE OF CALIFORNIA

12

COUNTY OF ALAMEDA

13 ANTHONY FERREIRO,

Case No.: RG18914320

14 Plaintiff,

CONSENT JUDGMENT

15

v.

Judge: Dennis Hayashi

Dept.: 518

16 RUBBERMAID INCORPORATED,

Hearing Date: January 17, 2019

Hearing Time: 2:30 PM

Reservation #: R-2005050

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Defendant.

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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 Rubbermaid
4 Incorporated (“Rubbermaid” 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. Rubbermaid is a person in
8 the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6
9 et seq.

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

14 1.3 **Notice of Violation/Complaint.** On or about September 14, 2017, Ferreiro served
15 Rubbermaid 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 Rubbermaid
18 polycarbonate pitchers exposed users in California to BPA. No public enforcer has brought and is
19 diligently prosecuting the claims alleged in the Notice. On July 25, 2018, Ferreiro filed a complaint
20 in the matter (the “Complaint”).

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

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Rubbermaid
10 polycarbonate pitchers that are manufactured, distributed and/or offered for sale in California by
11 Rubbermaid, or any entity to whom Rubbermaid directly or indirectly distributes.

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 **Reformulation of Covered Products.** As of the date this Consent Judgment is
16 signed by both Parties, and continuing thereafter, Covered Products that Rubbermaid directly
17 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
18 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
20 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
22 Product.

23 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
24 that that are BPA-Free when analyzed pursuant to ATS 367 Rev. 0 by LC/MS/MS or other
25 methodology utilized by federal or state government agencies for the purpose of determining BPA
26 migration from a polycarbonate food or drinkware item.

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3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

⚠ WARNING: This product can expose you to chemicals including bisphenol A (BPA), which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Rubbermaid may, but is not required to, use the alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

⚠ WARNING: Reproductive Harm - www.P65Warnings.ca.gov.

3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the product and shall be at least the same size as those other safety warnings.

1 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
2 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
3 Judgment or by complying with warning requirements adopted by OEHHA after the Effective Date.

4 **4. MONETARY TERMS**

5 4.1 **Civil Penalty.** Rubbermaid shall pay \$1,500.00 as a Civil Penalty pursuant to Health
6 and Safety Code § 25249.7(b), to be apportioned in accordance with California Health & Safety
7 Code § 25192, with 75% of the Civil Penalty remitted to the State of California’s Office of
8 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty
9 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

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

14 Evan J. Smith, Esquire
15 Brodsky & Smith, LLC
16 Two Bala Plaza, Suite 510
16 Bala Cynwyd, PA 19004

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

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
26 Sacramento, CA 95814

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

3 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Rubbermaid shall pay
4 \$13,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff
5 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
6 Rubbermaid's attention, litigating and negotiating and obtaining judicial approval of a settlement
7 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
10 acting in the public interest, and Rubbermaid, and its parents, shareholders, divisions, subdivisions,
11 subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and
12 assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly
13 or indirectly distribute or sell Covered Products, including but not limited to Sears Holdings
14 Management Corporation, Sears Holdings Corporation, MyOffice Innovations, manufacturers,
15 suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, marketplace hosts,
16 franchisees, and cooperative members ("Downstream Defendant Releasees"), of all claims for
17 violations of Proposition 65 based on exposure to BPA from Covered Products, with respect to any
18 Covered Product manufactured, distributed, or sold by Rubbermaid prior to the Effective Date.
19 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
20 with regard to the Covered Products.

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

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

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

17 6. INTEGRATION

18 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
19 any and all prior negotiations and understandings related hereto shall be deemed to have been
20 merged within it. No representations or terms of agreement other than those contained herein exist
21 or have been made by any Party with respect to the other Party or the subject matter hereof.

22 7. GOVERNING LAW

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

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Elizabeth McNulty
8 Taylor Anderson LLP
9 19100 Von Karman Ave, Suite 820
 Irvine, CA 92612

10 And

11 For Ferreiro:

12 Evan Smith
13 Brodsky & Smith, LLC
14 2 Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and
20 the same document.

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

23 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
24 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
25 and Defendant agrees it shall support approval of such Motion.

26 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
27 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
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1 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
2 30 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
13 the unsuccessful party has acted with substantial justification. For purposes of this Consent
14 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
15 Discovery Act of 1986, Code of Civil Procedure § 2016, et seq.

16 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
17 pursuant to law.

18 **13. RETENTION OF JURISDICTION**

19 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **14. AUTHORIZATION**

22 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
23 respective Parties and have read, understood and agree to all of the terms and conditions of this
24 document and certifies that he or she is fully authorized by the Party he or she represents to execute
25 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
26 explicitly provided herein each Party is to bear its own fees and costs.
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AGREED TO:

AGREED TO:

Date: 9/21/18
By: Anthony Ferreira
ANTHONY FERREIRO

Date: [Signature]
By: 9/18/2018
RUBBERMAID COMMERCIAL
PRODUCTS LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court