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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,

v.

KIDSBOOKS, LLC, BURLINGTON COAT
FACTORY WAREHOUSE CORP.,
Defendant.

Case No.: RG18904514

CONSENT JUDGMENT

Judge: Robert McGuiness
Dept.: 22
Hearing Date: September 4, 2018
Hearing Time: 3:00 PM
Reservation #: R-1974947

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 Kidsbooks, LLC
4 (“Kidsbooks” 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. Kidsbooks 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’s products,
11 including Finding Dory Activity Mats, have exposed individuals in California to Di(2-ethylhexyl)
12 phthalate (DEHP) without providing clear and reasonable warnings under Proposition 65. DEHP
13 is listed under Proposition 65 as a chemical known to the State of California to cause cancer and
14 reproductive toxicity.

15 1.3 **Notice of Violation/Complaint.** On or about November 30, 2017, Ferreiro served
16 Kidsbooks and Burlington Coat Factory Warehouse Corporation (“Burlington”), and various public
17 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
18 Safety Code §25249.7(d) (the “Notice”), alleging violations of Proposition 65 for failing to warn
19 consumers and customers that Kidsbooks’ products exposed users in California to DEHP. No
20 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May
21 11, 2018, Ferreiro filed a complaint (the “Complaint”) in the matter against Kidsbooks and
22 Burlington¹.

23 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
25 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
26 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all

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28 ¹ On July 18, 2018, Burlington was dismissed from the Action.

1 claims which were or could have been raised in the Notice or Complaint.

2 1.5 Defendant denies the material, factual, and legal allegations contained in the Notice
3 and Complaint and maintains that, to the best of its knowledge, its products that are or have been
4 sold and distributed in California, including the Covered Products, have been and are in compliance
5 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Defendant
6 of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
7 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion,
8 issue of law, or violation of law, such being specifically denied by Defendant. However, this
9 section shall not diminish or otherwise affect the obligations, responsibilities, and duties of
10 Defendant under this Consent Judgment. Notwithstanding the allegations in the Notice, Defendant
11 maintains it has not knowingly manufactured, sold, or distributed the Covered Products for sale in
12 California in violation of Proposition 65.

13 **2. DEFINITIONS**

14 2.1 **Covered Products.** The term “Covered Products” means activity mats, including
15 but not limited to Finding Dory Activity Mats, that are manufactured, imported, distributed, sold,
16 and/or offered for sale in California by Kidsbooks.

17 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
18 entered as a Judgment of the Court and Brodsky & Smith, LLC has provided Defendant’s attorney
19 with notice of the entry of the Consent Judgment and a copy thereof.

20 **3. INJUNCTIVE RELIEF: WARNINGS**

21 3.1 As of the date this Consent Judgment is signed by both Parties, Kidsbooks shall not
22 manufacture or order from any supplier any Covered Products intended for retail sale in California
23 that contains DEHP on any component to which consumers are exposed in excess of 0.1% (1,000
24 ppm) (hereinafter “Reformulated Products”) unless the Covered Product is accompanied by a
25 warning that complies with Article 6 of Title 27 of the California Code of Regulations. Covered
26 Products manufactured by Kidsbooks before the date this Consent Judgment is signed by both
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1 Parties may sell through without a warning even if not Reformulated Products. Until August 30,
2 2018, the warning shall consist of either:

3 (a) The statement: “WARNING: This product contains a chemical known to the State
4 of California to cause cancer and birth defects or other reproductive harm.”; or (b)(1) A
5 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold
6 black outline to the left of the word “warning” in bold all capital letters, followed by the
7 statement “This product can expose you to chemicals including Di(2-ethylhexyl)phthalate
8 (DEHP), which is known to the State of California to cause cancer and birth defects or other
9 reproductive harm. For more information, go to www.P65Warnings.ca.gov.”; or (2) a
10 warning consisting of a symbol that is a black exclamation point in a yellow equilateral
11 triangle with a bold black outline to the left of the word “warning” in bold all capital letters,
12 followed by the statement “Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”²

13 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section
14 3.1(b) shall be used.

15 3.2 The warning provided pursuant to § 3.1 shall be affixed to or printed on the Covered
16 Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic
17 process, providing that the warning is displayed with such conspicuousness, as compared with other
18 words, statements, or designs as to render it likely to be read and understood by an ordinary
19 individual under customary conditions of purchase or use. A warning may be contained in the same
20 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
21 concerning the use of the product and shall be at least the same size as those other safety warnings.

22 3.3 Kidsbooks shall be deemed to be in compliance with Proposition 65 by either
23 adhering to §§ 3.1 and 3.2 of this Consent Judgment or by complying with the warning requirements
24 in effect on the Effective Date.

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27 ² 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 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Kidsbooks shall pay \$4,000.00 as a Civil Penalty pursuant to Health
3 and Safety Code § 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25192, with 75% of the total Civil Penalty remitted to the State of California’s Office of
5 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty
6 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

7 4.1.1 Within ten (10) days of the date this Agreement is entered as a Judgment
8 by the Court and notice thereof has been provided to Kidsbooks, Kidsbooks shall issue two
9 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$3,000.00; and
10 to (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$1,000.00. Payment owed
11 to Ferreiro pursuant to this Section shall be delivered to the following payment address:

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

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

17 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

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

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

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1 4.2 **Attorneys' Fees.** Within ten (10) days of the date this Agreement is entered as a
2 Judgment by the Court, Kidsbooks shall pay \$31,000.00 to Brodsky & Smith, LLC ("Brodsky
3 Smith") as complete reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of
4 investigating, bringing this matter to Kidsbooks' attention, litigating and negotiating and obtaining
5 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.
6 Other than the payment required hereunder each Party is to bear its own attorneys fees and costs.

7 **5. RELEASE OF ALL CLAIMS**

8 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
9 acting on his own behalf, and on behalf of the public interest, and Kidsbooks, and its parents,
10 shareholders, members, directors, officers, agents, managers, employees, representatives, agents,
11 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
12 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
13 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
14 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
15 retailers, franchisees, and cooperative members, including but not limited to Burlington, and its
16 parents, affiliates, subsidiaries, shareholders, directors, officers, agents, employees, attorneys,
17 successors and assigns, franchisees, cooperative members, and licensees ("Downstream
18 Releasees"), of all claims for violations of Proposition 65 based on exposure to DEHP with respect
19 to any Covered Products. This Consent Judgment shall have preclusive effect such that no other
20 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
21 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
22 alleged in the Notice or Complaint, or that could have been brought pursuant to the Notice against
23 Kidsbooks or its Downstream Releasees of the Covered Products including but not limited to
24 ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment constitutes
25 compliance with Proposition 65 with regard to the Covered Products.

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

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

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

21 6. INTEGRATION

22 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
23 any and all prior negotiations and understandings related hereto shall be deemed to have been
24 merged within it. No representations or terms of agreement other than those contained herein exist
25 or have been made by any Party with respect to the other Party or the subject matter hereof.

26 7. GOVERNING LAW

27 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California. . In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
reason of law generally, or as to Covered Products, then Defendant shall have no further obligations

1 pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so
2 affected.

3 **8. NOTICES**

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

8 For Defendant:

9 Lawrence M. Freedman
10 Law Offices of Ash, Anos, Freedman & Logan, LLC
11 77 W Washington St., Ste. 1211
12 Chicago, IL 60602
13 lmfreedman@aflaw.com

14 And

15 For Ferreiro:

16 Evan Smith
17 Brodsky & Smith, LLC
18 9595 Wilshire Blvd., Ste. 900
19 Beverly Hills, CA 90212
20 esmith@brodskysmith.com

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

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

28 **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.
Defendant agrees it shall support approval of such Motion.

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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 and entered by the Court within one year after it is fully executed by the Parties. In such case, the Parties agree to meet and confer on how to proceed.

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: (a) written agreement between the Parties and entry of a modified Consent Judgment by the Court; or (b) modification of the Consent Judgment by the Court following either Party's successful motion or application.

12. RETENTION OF JURISDICTION

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

13. AUTHORIZATION

13.1 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 certify 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.

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AGREED TO:

AGREED TO:

Date: 7/17/18

Date: 6/13/2018

By: Anthony Ferreiro
ANTHONY FERREIRO

By: [Signature]
KID\$BOOKS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court