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

11 ANTHONY FERREIRO,
12 Plaintiff,
13 v.
14 J.C.S. APPAREL GROUP, INC.,
15 Defendant.

Case No.: RG18906599
CONSENT JUDGMENT
Judge: Jo-Lynne Q. Lee
Dept.: 18
Hearing Date: October 2, 2018
Hearing Time: 3:00 PM
Reservation #: R-1986009

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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 J.C.S. Apparel Group,
4 Inc. (“J.C.S. Apparel Group” 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. J.C.S. Apparel Group is
8 alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & Safety Code §§ 25249.6 et 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 Faux Leather Jackets without
12 first providing clear and reasonable exposure warnings under Proposition 65. DEHP is listed under
13 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive
14 toxicity.

15 1.3 **Notice of Violation/Complaint.** On or about December 4, 2017, Ferreiro served
16 J.C.S. Apparel Group and various public enforcement agencies with documents entitled “60-Day
17 Notice of Violation” pursuant to Health & Safety Code § 25249.7(d) (the “Notice”), alleging that
18 Defendant was in violation of Proposition 65 for failing to warn consumers and customers that Faux
19 Leather Jackets exposed users in California to DEHP. No public enforcer has brought and is
20 diligently prosecuting the claims alleged in the Notices. On May 29, 2018, Ferreiro filed a
21 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, final, and 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 1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.
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9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Faux Leather Jackets that
11 are manufactured, distributed and/or offered for sale in California by J.C.S. Apparel Group.

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

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 Commencing one hundred twenty (120) days after the Effective Date, J.C.S.
16 Apparel Group shall not manufacture or order from any supplier any Covered Products intended
17 for retail sale in California that contains DEHP on any component to which consumers are exposed
18 in excess of 0.1% (1,000 ppm) (hereinafter “Reformulated Products”) unless the Covered Product
19 is accompanied by a warning that complies with Article 6 of Title 27 of the California Code of
20 Regulations. Covered Products sold by J.C.S. Apparel Group up to and including one hundred and
21 twenty (120) days after the Effective Date may sell through without a warning even if not
22 Reformulated Products. Until August 30, 2018, the warning shall consist of either:

- 23 (a) The statement: “WARNING: This product contains a chemical known to the State
24 of California to cause cancer and birth defects or other reproductive harm.”; or (b)(1) A
25 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold
26 black outline to the left of the word “warning” in bold all capital letters, followed by the
27 statement “This product can expose you to chemicals including di(2-ethylhexyl)phthalate
28 (DEHP), which is known to the State of California to cause cancer and birth defects or other

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reproductive harm. For more information, go to www.P65Warnings.ca.gov.”; or (2) a warning consisting of a symbol that is 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 “Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”¹

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

3.2 The warning provided pursuant to § 3.1 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 Covered Product, or that provides other information about the Covered Product and shall be at least the same size as those other safety warnings.

4. MONETARY TERMS

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

4.1.1 Within fourteen (14) days of the Effective Date, J.C.S. Apparel Group shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$500.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

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

1 Evan J. Smith, Esquire
2 Brodsky & Smith, LLC
3 Two Bala Plaza, Suite 510
4 Bala Cynwyd, PA 19004

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

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

21 4.2 **Attorneys' Fees.** J.C.S. Apparel Group shall pay \$17,000.00 to Brodsky & Smith,
22 LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's attorneys' fees and costs
23 incurred as a result of investigating, bringing this matter to J.C.S. Apparel Group's attention,
24 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
25 pursuant to Code of Civil Procedure § 1021.5.

26 4.2.1 J.C.S. Apparel Group shall pay the attorneys' fees identified in § 4.2 in two
27 (2) equal installment payments. J.C.S. Apparel Group shall issue a check for the
28 first installment payment of \$8,500.00 within fourteen (14) days of the Effective
Date. J.C.S Apparel Group shall issue a check for the second and final installment
payment of \$8,500.00 within forty-five (45) days of the Effective Date.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
acting on his own behalf, and on behalf of the public interest, and J.C.S. Apparel Group, and its

1 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
2 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
3 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
4 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
5 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
6 retailers, franchisees, marketplace hosts and cooperative members, including but not limited to
7 Burlington Coat Factory Warehouse Corporation (“Downstream Releasees”), of all claims for
8 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the
9 Notice, with respect to any Covered Products manufactured, distributed, or sold by J.C.S. Apparel
10 Group prior to the Effective Date or within 120 days after the Effective Date. This Consent
11 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
12 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
13 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
14 been brought pursuant to the Notice against J.C.S. Apparel Group or its Downstream Releasees of
15 the Product including but not limited to alleged violations of this Consent Judgment (“Proposition
16 65 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with
17 Proposition 65 with regard to the Covered Products.

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

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

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

15 **6. INTEGRATION**

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

20 **7. GOVERNING LAW**

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

26 **8. NOTICES**

27 8.1 Unless specified herein, all correspondence and notices required to be provided
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class (registered or certified mail), return receipt requested; or (ii) overnight courier on any party
2 by the other party at the following addresses:

3 For Defendant:

4 Ann Grimaldi
5 Jennifer K. Singh
6 Grimaldi Law Offices
7 535 Mission Street
8 14th Floor
9 San Francisco, CA 94105

8 And

9 For Ferreiro:

10 Evan Smith
11 Brodsky & Smith, LLC
12 9595 Wilshire Blvd., Ste. 900
13 Beverly Hills, CA 90212

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

17 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and
19 the same document.

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

21 **APPROVAL**

22 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
23 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
24 Defendant agrees it shall support approval of such Motion.

25 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
26 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
27 the Parties agree to meet and confer on how to proceed, and if such agreement is not reached within
28 30 days, the case shall proceed on its normal course.

1 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
4 its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **12. ATTORNEY'S FEES**

9 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

11 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
12 pursuant to law.

13 **13. RETENTION OF JURISDICTION**

14 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
15 Consent Judgment.

16 **14. AUTHORIZATION**

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

AGREED TO:

Date: 8/14/18
By: Anthony Ferreiro
ANTHONY FERREIRO

Date: July 1 2018
By: [Signature]
F.C.S. APPAREL GROUP, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court