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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 STANCE/BEAUTY LABS, LLC,

15 Defendant.

Case No.: RG18902186

**PROPOSED CONSENT
JUDGMENT**

Judge: Ronni MacLaren

Dept.: 25

Hearing Date: June 21, 2018

Hearing Time: 9:00 AM

Reservation #: R-1960794

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Stance/Beauty Labs, LLC (“Stance/Beauty Labs” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Stance/Beauty Labs is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed individuals to Di(2-ethylhexyl) phthalate (DEHP) from its manufacture, distribution, supply and/or sale of Travel Kits, including Travel Kits labeled as CVS Pharmacy, Inc. Travel Kits (CVS Travel Kits) without providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about January 30, 2018, Ferreiro served Stance/Beauty Labs, CVS Pharmacy, Inc. and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in violation of Proposition 65 for failing to warn consumers and customers that CVS Travel Kits exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On April 25, 2018, Ferreiro filed a complaint (the “Complaint”) in the matter.

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

1 and/or in the Notice.

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 Travel Kits, including
11 CVS Travel Kits that are manufactured, distributed and/or offered for sale in California by
12 Stance/Beauty Labs.

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

15 **3. INJUNCTIVE RELIEF: WARNINGS**

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

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

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

8 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section
9 3.1(b) shall be used.

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

18 4. MONETARY TERMS

19 4.1 **Civil Penalty.** Stance/Beauty Labs shall pay a Civil Penalty of two thousand dollars
20 (\$2,000.00) pursuant to Health and Safety Code section 25249.7(b), to be apportioned in
21 accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
22 State of California's Office of Environmental Health Hazard Assessment ("OEHHA" and the
23 remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety
24 Code § 25249.12(d).

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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 4.1.1 Within fourteen (14) days of the date this Agreement is entered as a
2 Judgment by the Court, Stance/Beauty Labs shall issue two separate checks for the Civil Penalty
3 payment to (a) "OEHHA" in the amount of fifteen hundred dollars (\$1,500.00); and (b) "Brodsky
4 & Smith, LLC in Trust for Ferreiro" in the amount of five hundred dollars (\$500.00). Payment
5 owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

6 Evan J. Smith, Esquire
7 Brodsky & Smith, LLC
8 Two Bala Plaza, Suite 510
9 Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 P.O. Box 4010
17 Sacramento, CA 95812-4010

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

20 4.2 **Attorneys' Fees.** Within fourteen (14) days of the date this Agreement is entered as
21 a Judgment by the Court, Stance/Beauty Labs shall pay twenty-two thousand five hundred dollars
22 (\$22,500.00) to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff
23 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
24 Stance/Beauty Labs' attention, litigating and negotiating and obtaining judicial approval of a
25 settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5.

26 **5. RELEASE OF ALL CLAIMS**

27 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
28 acting on his own behalf, and on behalf of the public interest, and Stance/Beauty Labs, and its
parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they

1 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
2 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
3 retailers, including but not limited to CVS Pharmacy, Inc., franchisees, and cooperative members,
4 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to
5 DEHP from Covered Products as set forth in the Notice, with respect to any Covered Products
6 manufactured, distributed, or sold by Stance/Beauty Labs prior to the Effective Date. This Consent
7 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
8 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
9 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
10 been brought pursuant to the Notice against Stance/Beauty Labs or its Downstream Releasees of
11 the Product including but not limited to (“Proposition 65 Claims”). Compliance with the terms of
12 this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
13 Products.

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

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR

1 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
2 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
3 THE DEBTOR.

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

9 **6. INTEGRATION**

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

14 **7. GOVERNING LAW**

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

20 **8. NOTICES**

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

25 For Defendant:

26 Renee D. Wasserman
27 ROGERS JOSEPH O'DONNELL a Professional Law Corporation
28 311 California Street, 10th fl.
San Francisco, CA 94104

And

1 For Ferreiro:

2 Evan Smith
3 Brodsky & Smith, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

14 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
15 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
16 Defendant agrees it shall support approval of such Motion.

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
19 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
20 30 days, the case shall proceed on its normal course.

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

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
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1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

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

15
16 **AGREED TO:**

AGREED TO:

17 Date: 5/2/2018

17 Date: 4/28/2018

18 By: Anthony Ferreiro
19 ANTHONY FERREIRO

18 By: [Signature]
19 STANCE/BEAUTY LABS, LLC

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21
22 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

23
24 Dated: _____

Judge of Superior Court