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16 Attorneys for Defendant
17 PARIS PRESENTS, INC.

18
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20
21 COUNTY OF MARIN
22
23 UNLIMITED CIVIL JURISDICTION
24

25 CENTER FOR ADVANCED PUBLIC
26 AWARENESS,

27 Plaintiff,

28 v.

PARIS PRESENTS, INC.; DOES 1-30; *et al*,
Defendants.

Case No.: CIV 1904826

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*
and Code of Civil Procedure § 664.6)

CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Center for Advanced
3 Public Awareness (“CAPA”) and Paris Presents, Inc. (“Paris Presents”), with CAPA and Paris
4 Presents each individually referred to as a “Party” and collectively, as the “Parties”, to resolve
5 the allegations in the December 17, 2018 60-Day Notice of Violation and avoid costly and
6 protracted litigation, in compliance with the Safe Drinking Water and Toxic Enforcement Act of
7 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

8 **1.1 Plaintiff**

9 CAPA is a California-based non-profit organization who seeks to protect the
10 environment through the elimination or reduction of toxic chemicals utilized in the manufacture
11 of consumer products and to increase public awareness of those chemicals by promoting
12 environmentally sound practices and corporate responsibility.

13 **1.2 Defendant**

14 Paris Presents employs ten or more persons and is a person in the course of doing
15 business for purposes of Proposition 65, pursuant to Health & Safety Code § 25249.11(b).

16 **1.3 General Allegations**

17 CAPA alleges that Paris Presents manufactures, imports, distributes, sells or offers for
18 sale in California Real Techniques and EcoTools makeup sponges, causing exposures to di(2-
19 ethylhexyl)phthalate (“DEHP”), without the health hazard warning CAPA alleges is required by
20 Proposition 65.

21 **1.4 Listed Chemical**

22 On October 24, 2003, the State of California added DEHP to the list of chemicals known
23 to cause birth defects, reproductive toxicity and cancer.

24 **1.5 Product Description**

25 The products covered by this Consent Judgment are makeup sponges including, but not
26 limited to, Real Techniques by Sam & Nic Miracle Complexion Sponges, UPC #0 79625 91578
27 5, SKU #110758, and EcoTools Total Perfecting Blender, UPC #0 79625 01605, manufactured,
28

1 imported, distributed, sold or offered for sale in California by Paris Presents, hereinafter, the
2 “Products”.

3 **1.6 Notice of Violation**

4 On December 17, 2018, CAPA served Paris Presents, the California Attorney General
5 and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”),
6 alleging that Paris Presents violated Proposition 65 when it failed to warn its customers and
7 consumers in California that its Products can expose users to DEHP. To the best of the Parties’
8 knowledge, no public enforcer has commenced and is diligently prosecuting an action to
9 enforce the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On December 23, 2019, CAPA commenced the instant action (“Complaint”), naming
12 Paris Presents as a defendant for the alleged violations of Proposition 65 that are the subject of
13 the Notice.

14 **1.8 No Admission**

15 Paris Presents denies the material, factual, and legal allegations contained in the Notice
16 and Complaint, and maintains that all of the products that it has sold or distributed for sale in
17 California, including the Products, have been, and are, in compliance with all laws. Nothing in
18 this Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment
19 constitute or be construed as, an admission by Paris Presents of any fact, finding, conclusion of
20 law, issue of law, or violation of law. This section shall not, however, diminish or otherwise
21 affect Paris Presents’ obligations, responsibilities, and duties under this Consent Judgment.

22 **1.9 Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Paris Presents as to the allegations contained in the Complaint, that venue is
25 proper in Marin County, and that the Court has jurisdiction to enter and enforce the provisions
26 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.
27
28

1 **1.10 Effective Date**

2 The term “Effective Date” shall mean the date on which the Court approves and enters
3 this Consent Judgment.

4 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

5 **2.1 Commitment to Reformulate**

6 Commencing on the Effective Date and continuing thereafter, Paris Presents shall only
7 manufacture or distribute for sale in or into the State of California, Products that are
8 Reformulated Products, as defined by Section 2.2, below.

9 **2.2 Reformulation Standard Defined**

10 For purposes of this Consent Judgment, “Reformulated Products” are defined as
11 Products containing DEHP, Butyl Benzyl Phthalate (BBP), Di-isodecyl Phthalate (DIDP), Di-n-
12 butyl Phthalate (DBP), Di-n-hexyl Phthalate (DnHP), and/or Diisononyl Phthalate (DINP) each
13 in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by
14 a laboratory accredited by the State of California, a federal agency, or a nationally recognized
15 accrediting organization. For purposes of compliance with this reformulation standard, testing
16 samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC)
17 methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency
18 (EPA) methodologies 3580A and 8270C/D, or other scientifically valid methodologies utilized
19 by federal or state government agencies to determine phthalate content in a solid substance.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Monetary Agreement**

22 In full satisfaction and settlement of all claims alleged in the Notice, the Complaint and
23 this Consent Judgment, and pursuant to Health & Safety Code § 25249.7(b) and California
24 Code of Regulations title 11, Chapter 4, §§ 3203 and 3204, Paris Presents agrees to pay a total
25 of \$1,000 in civil penalties, additional settlement payments and attorneys’ fees, subject to Court
26 approval, as contemplated by Section 5.

1 **3.2 Civil Penalty Payments**

2 Pursuant to Health and Safety Code § 25249.7(b), Paris Presents agrees to pay \$1,000 in
3 civil penalties. Paris Presents' civil penalty payment will be allocated according to Health and
4 Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to
5 the California Office of Environmental Health Hazard Assessment (OEHHA), and the
6 remaining twenty-five percent (25%) retained by CAPA. Paris Presents shall issue its payment
7 in two checks made payable to: (a) "OEHHA" in the amount of \$750; and (b) "Center for
8 Advanced Public Awareness" in the amount of \$250. CAPA's counsel shall deliver OEHHA's
9 and CAPA's portion of the penalty payment.

10 **3.3 Reimbursement of Attorneys' Fees and Costs**

11 The parties acknowledge that CAPA and its counsel offered to resolve this dispute
12 without reaching terms on their fees and costs. Shortly after the Parties finalized the other
13 material settlement terms, they negotiated and reached an accord on the compensation to be paid
14 to CAPA's counsel, under general contract principles and the private attorney general doctrine,
15 codified at California Code of Civil Procedure § 1021.5, for all work performed through the
16 mutual execution of this Consent Judgment and court approval of the same, but exclusive of
17 fees and costs on appeal, if any. Paris Presents agrees to pay \$15,500 by a check made payable
18 to "Seven Hills LLP", for all fees and costs incurred investigating, bringing this matter to Paris
19 Presents' attention, litigating, negotiating a settlement in the public interest, and obtaining the
20 Court's approval of its terms pursuant to Section 5.

21 **3.4 Payment Timing; Payments Due in Trust**

22 All payments payable and due under this Consent Judgment shall be delivered to
23 CAPA's counsel at the payment address listed in Section 3.5 on or before July 15, 2020.
24 Should the Court subsequently deny CAPA's motion for judicial approval of this Consent
25 Judgment, then within five (5) days of the date of the Court order, CAPA's counsel shall remit
26 all payments due and received under this Consent Judgment to Paris Presents' counsel,
27 Greenberg Traurig, LLP, ATTN: Will Wagner, 1201 K Street, Suite 1100, Sacramento,
28 California 95814

1 **3.5 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to the following
3 address:

4 Kimberly Gates Johnson
5 Gates Johnson Law
6 2822 Moraga Street
7 San Francisco, CA 94122

8 **4. ENFORCEMENT OF CONSENT JUDGMENT**

9 CAPA may, by motion or application for an order to show cause, attempt to enforce the
10 terms and conditions contained in this Consent Judgment. Prior to bringing any motion or
11 application to enforce, CAPA shall meet and confer regarding the basis for CAPA's anticipated
12 motion or application in an attempt to resolve it informally, including providing Paris Presents a
13 reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such
14 attempts at informal resolution fail, CAPA may file its enforcement motion or application. The
15 prevailing party on any motion to enforce this Consent Judgment shall be entitled to its
16 reasonable attorneys' fees and costs incurred as a result of such motion or application. This
17 Consent Judgment may only be enforced by the Parties or by an appropriate public enforcer.

18 **5. CLAIMS COVERED AND RELEASED**

19 **5.1 CAPA's Release of Proposition 65 Claims**

20 CAPA, acting on its own behalf and in the public interest, and on behalf of its past and
21 current agents, representatives, attorneys, successors an assignees ("Releasers") releases Paris
22 Presents and its parents, subsidiaries, affiliated entities under common ownership, directors,
23 officers, employees, and attorneys ("Releasees") and each entity to whom Paris Presents
24 directly or indirectly distributes or sells the Products including, but not limited to, its
25 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
26 licensors and licensees ("Downstream Releasees") for any violations arising under Proposition
27 65 for unwarned exposures to DEHP from the Products manufactured or distributed into the
28 State of California by Paris Presents prior to the Effective Date, as set forth in the Notice.
Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
65 by Paris Presents with respect to the alleged or actual failure to warn about exposures to

DEHP, from Products manufactured or distributed into California for sale by Paris Presents after the Effective Date.

5.2 CAPA's Individual Release of Claims

CAPA, in its individual capacity only and *not* in his representative capacity, also provides a release to Paris Presents, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of CAPA of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP, BBP, DIDP, DBP, DnHP and/or DINP in Products manufactured or distributed into the State of California by Paris Presents prior to the Effective Date. Nothing in this section shall affect CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee or Downstream Releasee that does not involve Paris Presents' Products.

5.3 Paris Presents' Release of CAPA

Paris Presents, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other representatives, and Releasors, for any and all actions taken or statements made (or those that could have been taken or made) by CAPA and his attorneys and other representatives in the course of investigating the claims alleged in the Notices, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. COURT APPROVAL

This Consent Judgment shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties. CAPA and Paris Presents agree to support the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval of this Consent Judgment, which motion CAPA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of

1 their counsel, to support the entry of this agreement as a judgment, and to obtain judicial
2 approval of their settlement in a timely manner. For purposes of this section, "best efforts" shall
3 include, at a minimum, supporting the motion for approval, responding to any objection that any
4 third-party may file or lodge, and appearing at the hearing before the Court if so requested.

5 **7. SEVERABILITY**

6 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
7 any provision of this Consent Judgment is deemed by a court to be unenforceable, the validity
8 of the remaining provisions shall not be adversely affected.

9 **8. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed,
12 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
13 Products, then Paris Presents may provide CAPA with written notice of any asserted change in
14 the law, and shall have no further injunctive obligations pursuant to this Consent Judgment,
15 with respect to, and to the extent that, the Products are so affected. Nothing in this Consent
16 Judgment shall be interpreted to relieve Paris Presents from its obligation to comply with any
17 pertinent state or federal law or regulation.

18 **9. NOTICE**

19 Unless specified herein, all correspondence and notice required by this Consent
20 Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or
21 certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by
22 the other at the following addresses:

23 For Paris Presents:

24 Will Wagner
25 Greenberg Traurig, LLP
1201 K Street, Suite 1100
26 Sacramento, CA 95814

For CAPA:

Kimberly Gates Johnson
Gates Johnson Law
2822 Moraga Street
San Francisco, CA 94122

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

1 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by portable document
3 format (pdf) signature, each of which shall be deemed an original and, all of which, when taken
4 together, shall constitute one and the same document.

5 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 CAPA and its counsel agree to comply with the reporting form requirements referenced
7 in California Health and Safety Code § 25249.7(f).

8 **12. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
12 and therein. There are no warranties, representations, or other agreements between the Parties
13 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
14 other than those specifically referred to in this Consent Judgment have been made by any Party
15 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
16 shall be deemed to exist or to bind any of the Parties hereto.

17 **13. MODIFICATION**

18 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
19 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful
20 motion of any party and the entry of a modified Consent Judgment by the Court thereon.

1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of
4 this Consent Judgment.

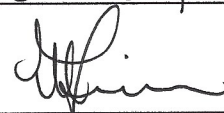
5 **AGREED TO:**

6
7 Date: June 18, 2020

8
9 By: 
10 Linda DeRose-Droubay
11 Executive Director
12 CENTER FOR ADVANCED
13 PUBLIC AWARENESS
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AGREED TO:

Date: June 24, 2020

By: 
Maria Fiore, Chief Financial Officer
PARIS PRESENTS, INC.