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11 AUDREY DONALDSON

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION
16

17 AUDREY DONALDSON,

18 Plaintiff,

19 v.

20 PONTE VEDRA GIFTS AND
21 ACCESSORIES COMPANY, LLC; and
22 DOES 1-150, inclusive,

23 Defendants.
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Case No. 19CV345554

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Audrey Donaldson
4 (“Donaldson”) and defendant Ponte Vedra Gifts and Accessories Company, LLC (“Ponte Vedra”),
5 with Donaldson and Ponte Vedra each referred to individually as a “Party” and collectively as the
6 “Parties.”

7 **1.2 Plaintiff**

8 Donaldson is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 Ponte Vedra employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Donaldson alleges that Ponte Vedra manufactures, imports, sells, and/or distributes for sale
17 in California, valet trays containing the phthalate chemical Di(2-ethylhexyl) Phthalate (“DEHP”).
18 DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other
19 reproductive harm. Donaldson alleges that Ponte Vedra failed to provide the health hazard warning
20 required by Proposition 65 for exposures to DEHP.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are valet trays containing DEHP that are
23 manufactured, sold, or distributed for sale in California by Ponte Vedra including, but not limited
24 to, the “*Nifty Personal Valet Tray*” UPC# 8 16846 02518 9 (hereinafter referred to as “Products”).
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1.6 Notice of Violation

On January 9, 2019, Donaldson served Ponte Vedra and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Ponte Vedra violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On April 2, 2019, Donaldson commenced the instant action, naming Ponte Vedra as one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

Ponte Vedra denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Ponte Vedra of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Ponte Vedra of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Ponte Vedra. This Section shall not, however, diminish or otherwise affect Ponte Vedra’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Ponte Vedra as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that Plaintiff provides notice that the Court has approved this Consent Judgment Plaintiff may provide

1 notice that the Court has approved this Consent Judgment via electronic mail to counsel for Ponte
2 Vedra.

3 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

4 **2.1 Reformulation Standards**

5 “Reformulated Products” are defined as those Products containing DEHP in concentrations
6 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
7 Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by
8 federal or state agencies for the purpose of determining the DEHP content in a solid substance.

9 **2.2 Reformulation/Warning Commitment**

10 As of the Effective Date, Ponte Vedra shall not manufacture, import, distribute, sell or offer
11 the Products for sale in the State of California unless they are Reformulated Products pursuant to
12 Section 2.1 or shall provide appropriate health hazard warnings pursuant to Section 2.3 below.
13 Compliance with the terms of this Consent Judgment shall constitute compliance with Proposition
14 65 with respect to exposures to DEHP from the Products, as set forth in the Notice.

15 **2.3 Product Warnings**

16 As of the Effective Date, all Products Ponte Vedra sells and/or distributes for sale in
17 California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning
18 pursuant to this Section. Ponte Vedra further agrees that the warning will be prominently placed
19 with such conspicuousness when compared with other words, statements, designs or devices as to
20 render it likely to be read and understood by an ordinary individual under customary conditions of
21 use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products shall
22 consist of a warning affixed directly to the product or product packaging, label, or tag, for Products
23 sold in California and contain one of the following statements:

24  **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

25
26 OR

1 **⚠ WARNING:** This product can expose you to chemicals including DEHP, which
2 is known to the State of California to cause birth defects or other reproductive harm.
3 For more information go to www.P65Warnings.ca.gov

4 In the event that the Office of Environmental Health Hazard Assessment promulgates one or
5 more regulations requiring or permitting specific safe harbor warning text and/or methods of
6 transmission different than those set forth above, Ponte Vedra shall be entitled to use, at its
7 discretion, such other specific safe harbor warning text and/or methods of transmission without
8 being deemed in breach of this Agreement.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty Payment**

11 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
12 alleged in the Notice or referred to in this Consent Judgment, Ponte Vedra agrees to pay \$3,000 in
13 civil penalties within seven (7) business days of the Effective Date. The penalty payment will be
14 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with
15 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
16 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson and
17 delivered to the address in Section 3.3 herein. Ponte Vedra will provide its payment in two checks
18 as follows: (1) “OEHHA” in the amount of \$2,250; and (2) “Audrey Donaldson” in the amount of
19 \$750.

20 **3.2 Attorneys’ Fees and Costs**

21 The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
23 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
24 other settlement terms had been reached, Ponte Vedra expressed a desire to resolve Donaldson’s
25 fees and costs. The Parties reached an accord on the compensation due to Donaldson and her
26 counsel under general contract principles and the private attorney general doctrine codified at Code
27 of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal
28 principles, within seven (7) business days of the Effective Date, Ponte Vedra agrees to pay \$23,000,

1 in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and costs incurred
2 investigating, bringing this matter to the attention of Ponte Vedra’s management, and negotiating a
3 settlement in the public interest, but exclusive of fees and costs on appeal, if any.

4 **3.3 Payment Address**

5 All payments under this Consent Judgment shall be delivered to the following address:

6 Voorhees & Bailey, LLP
7 990 Amarillo Avenue
8 Palo Alto, CA 94303

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Donaldson’s Release of Proposition 65 Claims**

11 Donaldson, acting on her own behalf and in the public interest, releases Ponte Vedra and its
12 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
13 and attorneys (“Releasees”) and each entity to whom Ponte Vedra directly or indirectly distributes
14 or sells the Products including, but not limited to, its downstream distributors, wholesalers,
15 customers, retailers, franchisers, cooperative members, licensors and licensees, (“Downstream
16 Releasees”) from all claims for any violations arising under Proposition 65 for unwarned exposures
17 to DEHP from the Products manufactured, imported, distributed or sold by Ponte Vedra prior to the
18 Effective Date, as set forth in the Notice, regardless of the date any Releasee or Downstream
19 Releasee distributes or sells the Product. The Parties further understand and agree that this Section
20 4.1 release shall not extend upstream to any entities that manufactured the Products or any
21 component parts thereof, or any distributors or suppliers who sold the Products or any component
22 parts thereof to Ponte Vedra.

23 **4.2 Donaldson’s Individual Release of Claims**

24 Donaldson, in her individual capacity only and *not* in her representative capacity,
25 also provides a release to Ponte Vedra, Releasees, and Downstream Releasees which shall be
26 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
27 obligations, costs, expenses, attorneys’ fees, damages, fines, penalties, losses, claims, liabilities and
28 demands of Donaldson of any nature, character or kind, whether known or unknown, suspected or

1 unsuspected, arising out of alleged or actual exposures to any chemicals listed under Proposition 65
2 (including without limitation DEHP) in Products manufactured, imported, distributed or sold by
3 Ponte Vedra before the Effective Date. In this regard, Donaldson hereby acknowledges that she is
4 familiar with and hereby waives Section 1542 of the California Civil Code, which provides as
5 follows:

6 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR**
7 **OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
8 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
9 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR**
10 **HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

11 The Parties further understand and agree that this Section 4.2 release shall not extend upstream to
12 any entities that manufactured the Products, or any component parts thereof, or any distributors or
13 suppliers who sold the Products, or any component parts thereof to Ponte Vedra. Nothing in this
14 Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against
15 a Releasee that does not involve Ponte Vedra's Products.

16 **4.3 Ponte Vedra's Release of Donaldson**

17 Ponte Vedra, on its own behalf and on behalf of its past and current agents, representatives,
18 attorneys, successors and/or assignees, hereby waive any and all claims against Donaldson and her
19 attorneys and other representatives, for any and all actions taken or statements made by Donaldson
20 and her attorneys and other representatives, whether in the course of investigating claims, seeking
21 to enforce Proposition 65 against it in this matter, or with respect to the Products.

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
25 after it has been fully executed by all Parties. Donaldson and Ponte Vedra agree to support the
26 entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
27 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
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1 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
2 which motion Donaldson shall draft and file and Ponte Vedra shall support, appearing at the hearing
3 if so requested. If any third-party objection to the motion is filed, Donaldson and Ponte Vedra
4 agree to work together to file a reply and appear at any hearing. This provision is a material
5 component of the Consent Judgment and shall be treated as such in the event of a breach.

6 **6. SEVERABILITY**

7 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
8 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
9 not be adversely affected.

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
13 rendered inapplicable by reason of law generally, or as to the Products, then Ponte Vedra may
14 provide written notice to Donaldson of any asserted change in the law and shall have no further
15 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
16 Products are so affected.

17 **8. NOTICE**

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

22 For Ponte Vedra:

23 Ponte Vedra Gifts and Accessories Company, LLC
24 c/o Jesse S. McIntyre, P.A.
25 105 Solana Road, Suite B
26 Ponte Vedra Beach, FL 32082

For Donaldson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

27 and
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1 Jeffrey Parker, Esq.
2 Sheppard Mullin Richter & Hampton LLP
3 333 S. Hope Street, 43rd Floor
4 Los Angeles CA 90071

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

7 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or portable
9 document format (PDF) signature, each of which shall be deemed an original, and all of which,
10 when taken together, shall constitute one and the same document.

11 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

12 Donaldson and her attorneys agree to comply with the reporting form requirements
13 referenced in California Health and Safety Code section 25249.7(f).

14 **11. MODIFICATION**

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

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understand, and agreed to all of the terms and conditions of this
21 Consent Judgment.

22 **AGREED TO:**

AGREED TO:

23 Date: 6-5-2019

Date:

24 By: 
25 AUDREY DONALDSON

By: _____
26 PONTE VEDRA GIFTS & ACCESSORIES
27 COMPANY, LLC

1 Jeffrey Parker, Esq.
2 Sheppard Mullin Richter & Hampton LLP
3 333 S. Hope Street, 43rd Floor
4 Los Angeles CA 90071

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AGREED TO:

23 Date:

Date:

24 By: _____
25 AUDREY DONALDSON

24 By:  _____
25 PONTE VEDRA GIFTS & ACCESSORIES
26 COMPANY, LLC