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BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212
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Attorneys for Plaintiff
ANTHONY FERREIRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

INFINITE TRADING GOODS, INC.,
WALMART, INC.,

Defendants.

Case No.: HG19043144
**[PROPOSED] CONSENT
JUDGMENT**

Judge: Jeffrey Brand
Dept.: 22
Hearing Date: April 20, 2023
Hearing Time: 2:00 PM
Reservation #: 327021997835

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 Walmart Inc.
4 (“Walmart” 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 who 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. Ferreiro alleges that Walmart is a person in
8 the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6,
9 *et seq.*

10 1.2 **Allegations and Representations.** Ferreiro alleges that the Covered Products
11 expose individuals to diisononyl phthalate (“DINP”) without providing a clear and reasonable
12 exposure warning pursuant to Proposition 65. DINP is listed pursuant to Proposition 65 as a
13 chemical known to the State of California to cause cancer and reproductive toxicity.

14 1.3 **Notices of Violation/Complaint.** On January 30, 2019, Ferreiro served Walmart,
15 Infinite Trading Goods, Inc., and various public enforcement agencies with a document entitled
16 “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notices”). The
17 Notices provided Walmart and such others, including public enforcers, with notice that alleged that
18 Walmart was in violation of California Health & Safety Code § 25249.6, for failing to warn
19 California consumers and customers that use of the Covered Products will expose them to DINP.
20 No public enforcer has diligently prosecuted the allegations set forth in the Notices.

21 1.4 On November 14, 2019, Ferreiro filed a complaint in the Superior Court for the State
22 of California, County of Alameda, case number HG19043144, against Infinite Trading Goods, Inc.
23 and Walmart based on the alleged violations set forth in the Notice (the “Complaint”). For purposes
24 of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant
25 as to the allegations contained in the Complaint filed in this matter, that venue is proper in the
26 County of Alameda, and that this Court has jurisdiction to approve, enter, and oversee the
27 enforcement of this Consent Judgment as a full and final binding resolution of all claims which
28

1 were or could have been raised in the Complaint based on the facts alleged therein and/or in the
2 Notices.

3 1.5 Defendant denies the material allegations contained in the Notices and Complaint
4 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
5 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
6 shall compliance with this Consent Judgment constitute or be construed as an admission by
7 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
8 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
9 responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term “Covered Products” (and, in the singular, “Covered
12 Product”) solely means the Stalion Sports Running Exercise Gym Armband Case for Samsung
13 Galaxy S7 Edge S8 S9 with clear plastic window (Catalog # 131770556, Walmart Item #
14 572037839, UPC # 0061776294571) supplied to Walmart by Infinite Trading Goods, Inc.

15 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
16 entered as a Judgment of the Court.

17 **3. INJUNCTIVE RELIEF**

18 3.1 As of the Effective Date, Walmart shall not sell the Covered Product on
19 walmart.com to customers with shipping addresses in California, unless a clear and reasonable
20 exposure warning pursuant to Proposition 65 is provided on Walmart.com. **Sell-Through Period.**
21 The Parties agree that Covered Products manufactured, distributed, shipped, sold or that are
22 otherwise in the stream of commerce prior to the Effective Date shall be subject to the release of
23 liability pursuant to Section 5 of this Consent Judgment, without regard to when the Covered
24 Products were, or are in the future, sold to consumers.

25 **4. MONETARY TERMS**

26 4.1 **Civil Penalty.** In settlement of all the claims referred to in this Settlement
27 Agreement, Walmart shall pay \$1,000 as a Civil Penalty pursuant to Health and Safety Code section
28 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with

1 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to
2 Ferreiro (payable to Brodsky & Smith, LLC as set forth below), as provided by California Health
3 & Safety Code § 25249.12(d).

4 4.1.1 Within fifteen (15) business days of the Effective Date, Walmart shall issue
5 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750; and to
6 (b) "Brodsky & Smith, LLC" in the amount of \$250. Ferreiro agrees to provide IRS W-9 forms for
7 each of the following payees under this Consent Judgment within five (5) days after this Consent
8 Judgment is fully executed by the Parties. Payment owed to Ferreiro pursuant to this Section shall
9 be delivered to the following payment address:

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

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

16 For United States Postal Service Delivery:
17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:
23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

28 A copy of the check to OEHHA shall be mailed to Brodsky & Smith, LLC at the address set forth
above in this Section 4.1.1 as proof of payment to OEHHA.

4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date and
conditioned upon Walmart's receipt of Brodsky & Smith, LLC's IRS W-9 forms in accordance
with Section 4.1.1 above, Walmart shall issue a check in the amount of \$15,500.00 payable to
Brodsky & Smith, LLC ("Brodsky Smith"), to be delivered to Brodsky Smith's address as listed in
Section 4.1.1 above, as complete reimbursement for Ferreiro's attorneys' fees and costs incurred

1 as a result of investigating, bringing this matter to Walmart’s attention, litigating and negotiating
2 and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
3 Procedure § 1021.5. Ferreiro and Brodsky Smith agree not to, and shall not, seek any other award
4 of costs or fees in connection with the Complaint, the Notices, or this lawsuit.

5 **5. RELEASE OF ALL CLAIMS**

6 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
7 acting on his own behalf, and on behalf of the public interest, and Walmart. Walmart, along with
8 each of its respective parents, direct and indirect subsidiaries, affiliates, affiliated entities under
9 common ownership, past and current agents, directors, officers, employees, representatives,
10 attorneys, insurers, successors, and assignees, are defined herein as the “Defendant Releasees”.
11 Further, all entities from whom any of the Defendant Releasees obtain, to whom any of the
12 Defendant Releasees provide an online sales platform or marketplace, and to whom any of the
13 Defendant Releasees directly or indirectly distribute or sell Covered Products, including but not
14 limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,
15 retailers, franchisees, dealers, customers, owners, purchasers, users, and cooperative members, and
16 each of their respective officers, directors, attorneys, representatives, shareholders, agents,
17 employees and affiliates, are defined herein as the “Upstream and Downstream Releasees”.
18 Ferreiro, acting on his own behalf and on behalf of the public interest, releases and discharges
19 Defendant Releasees and the Upstream and Downstream Releasees (collectively, the “Released
20 Parties”) from all Proposition 65 Claims, with “Proposition 65 Claims” defined to mean all claims
21 relating to Proposition 65 arising from the manufacture, import, sale, and/or distribution of Covered
22 Products (or website hosting relating to the same) prior to the Effective Date. This release includes,
23 without limitation, any such actions, and causes of action, in law or in equity, suits, liabilities,
24 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
25 limited to, fees of attorneys, experts, and others) of any nature whatsoever, whether known or
26 unknown, fixed or contingent, asserted for, that could have been asserted for, or that arise out of
27 alleged exposures to DINP from Covered Products sold, manufactured or distributed (or website
28 hosting relating to the same) by any Released Party in California prior to the Effective Date (or the

1 alleged failure of any Released Party to provide clear, accurate and reasonable warnings) under
2 Proposition 65, Business and Professions Code § 17200 *et seq.*, or any other applicable law about
3 exposure to DINP, but not including claims to enforce this Settlement Agreement. It is the Parties'
4 intent that that this Consent Judgment shall have preclusive effect such that no other person or
5 entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted
6 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in
7 the Complaint, or that could have been brought pursuant to the Notices or in the Complaint, against
8 the Released Parties concerning the Covered Products.¹ It is the Parties' intent that compliance
9 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to
10 alleged exposure to DINP from use of the Covered Products.

11 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
12 agents, representatives, attorneys, and successors and/or assignees, hereby waives all rights to
13 institute or participate in, directly or indirectly, any form of legal action and releases Walmart,
14 Defendant Releasees, and Upstream and Downstream Releasees from any and all manner of
15 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
16 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
17 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
18 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
19 distributed or sold by Walmart, Defendant Releasees, or Upstream and Downstream Releasees.

20 It is possible that other claims not known to Ferreiro arising out of the facts contained in the
21 Notices, or alleged in the complaint filed in the Action, relating to the Covered Products, will
22 hereafter be discovered or developed. Ferreiro acknowledges that this Settlement Agreement is
23 expressly intended to cover and include all such claims prior to the Effective Date, including all
24 rights of action therefor. Ferrerio acknowledges that the claims released in this §5.2 may include
25 unknown claims arising under Proposition 65 for unwarned exposures to DINP from the Covered

26 _____
27 ¹ For the sake of clarity, and notwithstanding anything else in this Consent Judgment to
28 the contrary, Walmart does not release the manufacturer or supplier of the Covered Products and
expressly reserves any and all rights against the said manufacturer(s) (including, but not limited
to, indemnity, contribution, and contract rights).

1 Products prior to the Effective Date, and nevertheless Ferrerio intends to release such claims, and
2 in doing so waives California Civil Code § 1542 (and any other state, federal, or international law
3 of similar import), which provides as follows:

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

11 Ferrerio understands and acknowledges that the significance and consequence of this waiver of
12 California Civil Code § 1542 is that even if Ferrerio suffers future damages arising out of or
13 resulting from, or related directly or indirectly to, in whole or in part, claims arising from any
14 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
15 about exposure to DINP from the Covered Products, including but not limited to any exposure to,
16 or failure to warn with respect to exposure to DINP from the Covered Products, Ferrerio will not
17 be able to make any claim for those damages against Released Parties. Furthermore, Ferrerio
18 acknowledges that he intends these consequences for any such claims arising from any alleged
19 violation of Proposition 65 or any other statutory or common law regarding the alleged failure to
20 warn about exposure to DINP from Covered Products as may exist as of the date of this release but
21 which Ferrerio does not know exist, and which, if known, would materially affect his decision to
22 enter into this Settlement Agreement, regardless of whether his lack of knowledge is the result of
23 ignorance, oversight, error, negligence, or any other cause.

24 5.3 Walmart waives any and all claims against Ferreiro, his attorneys, and other
25 representatives, for any and all actions taken or statements made (or those that could have been
26 taken or made) by Ferreiro and his attorneys and other representatives with regard to this matter,
27 whether in the course of investigating claims related to this case or otherwise seeking enforcement
28 of Proposition 65 against it in the above-captioned action, and/or with respect to Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
10 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
11 to the extent that, Covered Products are so affected.

12 **8. NOTICES**

13 8.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class mail, (registered or certified), return receipt requested and email; or (ii) overnight courier and
16 email to any party by the other party at the following addresses:

17 For Defendant:

18 Jeffrey M. Goldman
19 Troutman Pepper Hamilton Sanders LLP
20 5 Park Plaza, Suite 1400
Irvine, CA 92614-2524
Jeffrey.Goldman@troutman.com

21
22 CT Corporation System, as Agent for Service of Process for Walmart Inc.
330 N. Brand Blvd
23 Ste. 700
Glendale, CA 91203

24 For Ferreiro:

25 Evan Smith
26 Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
27 Beverly Hills, CA 90212
esmith@brodskysmith.com

28 Any party, from time to time, may specify in writing to the other party a change of address to

1 which all notices and other communications shall be sent.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

3 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
4 which shall be deemed an original, and all of which, when taken together, shall constitute one and
5 the same document.

6 **10. DISMISSAL OF COMPLAINT**

7 10.1 Plaintiff shall file a dismissal of the Complaint with prejudice within ten (10)
8 business days after the Effective Date. All claims and causes of action set forth in the Complaint
9 filed by Ferreiro (and/or any amendments thereto) are hereby dismissed with prejudice.

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

12 11.1 Ferreiro agrees to comply with the requirements set forth in California Health &
13 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
14 Defendant agrees it shall support approval of such motion.

15 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
16 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
17 Parties agree to meet and confer on how to proceed and make a good faith attempt to resolve before
18 a noticed motion is filed; if such agreement is not reached within 30 days, the case shall proceed
19 on its normal course.

20 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
21 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
22 Judgment and shall make a good faith attempt to resolve before a noticed motion is filed. If the
23 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course
24 on the trial court's calendar.

25 **12. ENFORCEMENT OF CONSENT JUDGMENT**

26 12.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
27 of this Consent Judgment under Code of Civil Procedure § 664.6.

28 12.2 Only the Parties may enforce the terms of this Consent Judgment.

1 12.3 Either Party may by motion seek to enforce the terms of this Consent Judgment.
2 However, prior to filing any such motion, the Party seeking to enforce this Consent Judgment shall
3 provide the allegedly violating Party with a written notice setting forth the detailed factual and legal
4 basis for the alleged violations (“Notice of Violation”). The Parties shall then meet and confer in
5 good faith during the thirty (30) day period following the date the Notice of Violation was sent in
6 an effort to try to reach agreement on an appropriate cure, penalty, and/or attorneys’ fees related to
7 the alleged violation (or the Parties might agree that there was no violation). If no agreement can
8 be reached among the Parties during the 30-day period, the Party seeking to enforce the provisions
9 of this Consent Judgment may thereafter move forward with filing a motion with the Court.

10 **13. MODIFICATION**

11 13.1 This Consent Judgment may be modified only by further stipulation of the Parties
12 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

13 **14. ATTORNEY’S FEES**

14 14.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
15 Judgment shall be required to pay the prevailing party’s reasonable attorney’s fees and costs.

16 14.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
17 pursuant to law.

18 **15. AUTHORIZATION**

19 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood and agree to all of the terms and conditions of this
21 document and certify that he or she is fully authorized by the Party he or she represents to execute
22 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
23 explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO:

AGREED TO:

Date: 2/27/23

December
Date: ~~November~~ 16, 2022

By: Anthony Ferreiro
ANTHONY FERREIRO

By: Jeffrey Goldman
Jeffrey Goldman
Authorized Signatory for
WALMART INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court