

1 Evan Smith (Bar No. SBN 242352)  
2 BRODSKY & SMITH, LLC  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212  
5 Tel: (877) 534-2590  
6 Fax: (310) 247-0160

7  
8 *Attorneys for Plaintiff*  
9 ANTHONY FERREIRO

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 INFINITE TRADING GOODS, INC.,  
15 WALMART, INC.,

16 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: WARNINGS**

18 3.1 **Clear and Reasonable Warning.** As of the Effective Date, and continuing  
19 thereafter, a clear and reasonable exposure warning as set forth in this § 3.1 must be provided for  
20 all Covered Products that Defendant sells in its retail stores located in California or on walmart.com  
21 to customers with California shipping addresses. There shall be no obligation for Defendant to  
22 provide a warning for Covered Products that enter the stream of commerce prior to the date this  
23 Consent Judgment is signed by both Parties.

24 (a) **Warning.** The Warning shall consist of the statement:

25 **⚠ WARNING:** This product can expose you to chemicals including diisononyl  
26 phthalate (DINP), which is known to the State of California to cause cancer. For  
27 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

28 (b) **Alternative Warning:** Walmart may, but is not required to, use the alternative  
short-form warning as set forth in this § 3.1(b) as follows:



**WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(c) For any Covered Product that is sold in Walmart retail stores located in California, the Section 3.1(a) or (b) warning statement is to be affixed to or printed on the Covered Product or its packaging.

(d) For any Covered Product that Defendant sells on walmart.com to persons with shipping addresses located in California, within 14 days of the Effective Date, Defendant shall include the Section 3.1(a) or (b) warning statement (or a clearly marked hyperlink to the warning using the signal word “**WARNING**”) on the Covered Product’s display page (or check-out or payment page) on walmart.com..

(e) The warning statement shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices as to render them likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The type size of the warning must be legible, and no smaller than any other warning provided with the Covered Products, and in no case less than six (6) point font.

#### **4. MONETARY TERMS**

4.1 **Civil Penalty.** In settlement of all the claims referred to in this Settlement Agreement, Walmart shall pay \$1,000 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Ferreiro (payable to Brodsky & Smith, LLC as set forth below), as provided by California Health & Safety Code § 25249.12(d).

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

Evan J. Smith, Esquire

1 Brodsky & Smith, LLC  
2 Two Bala Plaza, Suite 510  
3 Bala Cynwyd, PA 19004

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

6 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

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

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

20 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date and  
21 conditioned upon Walmart's receipt of Brodsky & Smith, LLC's IRS W-9 forms in accordance  
22 with Section 4.1.1 above, Walmart shall issue a check in the amount of \$15,500.00 payable to  
23 Brodsky & Smith, LLC ("Brodsky Smith"), to be delivered to Brodsky Smith's address as listed in  
24 Section 4.1.1 above, as complete reimbursement for Ferreiro's attorneys' fees and costs incurred  
25 as a result of investigating, bringing this matter to Walmart's attention, litigating and negotiating  
26 and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil  
27 Procedure § 1021.5. Ferreiro and Brodsky Smith agree not to, and shall not, seek any other award  
28 of costs or fees in connection with the Complaint, the Notices, or this lawsuit.

5. **RELEASE OF ALL CLAIMS**

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 Walmart. Walmart, along with  
each of its respective parents, direct and indirect subsidiaries, affiliates, affiliated entities under  
common ownership, past and current agents, directors, officers, employees, representatives,  
attorneys, insurers, successors, and assignees, are defined herein as the "Defendant Releasees".

1 Further, all entities from whom any of the Defendant Releasees obtain, to whom any of the  
2 Defendant Releasees provide an online sales platform or marketplace, and to whom any of the  
3 Defendant Releasees directly or indirectly distribute or sell Covered Products, including but not  
4 limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,  
5 retailers, franchisees, dealers, customers, owners, purchasers, users, and cooperative members, and  
6 each of their respective officers, directors, attorneys, representatives, shareholders, agents,  
7 employees and affiliates, are defined herein as the “Upstream and Downstream Releasees”.  
8 Ferreiro, acting on his own behalf and on behalf of the public interest, releases and discharges  
9 Defendant Releasees and the Upstream and Downstream Releasees (collectively, the “Released  
10 Parties”) from all Proposition 65 Claims based on exposure to DINP from use of the Covered  
11 Products, with “Proposition 65 Claims” defined to mean all claims relating to Proposition 65 arising  
12 from the manufacture, import, sale, and/or distribution of Covered Products (or website hosting  
13 relating to the same) prior to the Effective Date based on exposure to DINP. This release includes,  
14 without limitation, any such actions, and causes of action, in law or in equity, suits, liabilities,  
15 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not  
16 limited to, fees of attorneys, experts, and others ) of any nature whatsoever, whether known or  
17 unknown, fixed or contingent, asserted for, that could have been asserted for, or that arise out of  
18 alleged exposures to DINP from Covered Products sold, manufactured or distributed (or website  
19 hosting relating to the same) by any Released Party in California prior to the Effective Date (or the  
20 alleged failure of any Released Party to provide clear, accurate and reasonable warnings) under  
21 Proposition 65, Business and Professions Code § 17200 *et seq.*, or any other applicable law about  
22 exposure to DINP, but not including claims to enforce this Settlement Agreement. It is the Parties’  
23 intent that that this Consent Judgment shall have preclusive effect such that no other person or  
24 entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted  
25 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
26 the Complaint, or that could have been brought pursuant to the Notices or in the Complaint, against

27  
28

1 the Released Parties concerning the Covered Products.<sup>1</sup> It is the Parties' intent that compliance with  
2 the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to  
3 alleged exposure to DINP from use of the Covered Products.

4           5.2     In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
5 agents, representatives, attorneys, and successors and/or assignees, hereby waives all rights to  
6 institute or participate in, directly or indirectly, any form of legal action and releases Walmart,  
7 Defendant Releasees, and Upstream and Downstream Releasees from any and all manner of  
8 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,  
9 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature  
10 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with  
11 respect to any alleged violations of Proposition 65 related to or arising from Covered Products  
12 distributed or sold by Walmart, Defendant Releasees, or Upstream and Downstream Releasees.

13           It is possible that other claims not known to Ferreiro arising out of the facts contained in the  
14 Notices, or alleged in the complaint filed in the Action, relating to the Covered Products, will  
15 hereafter be discovered or developed. Ferreiro acknowledges that this Settlement Agreement is  
16 expressly intended to cover and include all such claims prior to the Effective Date, including all  
17 rights of action therefor. Ferreiro acknowledges that the claims released in this §5.2 may include  
18 unknown claims arising under Proposition 65 for unwarned exposures to DINP from the Covered  
19 Products prior to the Effective Date, and nevertheless Ferreiro intends to release such claims, and  
20 in doing so waives California Civil Code § 1542 (and any other state, federal, or international law  
21 of similar import), which provides as follows:

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

26 \_\_\_\_\_  
27 <sup>1</sup> 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 Ferreiro understands and acknowledges that the significance and consequence of this waiver of  
2 California Civil Code § 1542 is that even if Ferreiro suffers future damages arising out of or  
3 resulting from, or related directly or indirectly to, in whole or in part, claims arising from any  
4 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
5 about exposure to DINP from the Covered Products, including but not limited to any exposure to,  
6 or failure to warn with respect to exposure to DINP from the Covered Products, Ferreiro will not  
7 be able to make any claim for those damages against Released Parties. Furthermore, Ferreiro  
8 acknowledges that he intends these consequences for any such claims arising from any alleged  
9 violation of Proposition 65 or any other statutory or common law regarding the alleged failure to  
10 warn about exposure to DINP from Covered Products as may exist as of the date of this release but  
11 which Ferreiro does not know exist, and which, if known, would materially affect his decision to  
12 enter into this Settlement Agreement, regardless of whether his lack of knowledge is the result of  
13 ignorance, oversight, error, negligence, or any other cause.

14 5.3 Walmart waives any and all claims against Ferreiro, his attorneys, and other  
15 representatives, for any and all actions taken or statements made (or those that could have been  
16 taken or made) by Ferreiro and his attorneys and other representatives with regard to this matter,  
17 whether in the course of investigating claims related to this case or otherwise seeking enforcement  
18 of Proposition 65 against it in the above-captioned action, and/or with respect to Covered Products.

19 **6. INTEGRATION**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
21 any and all prior negotiations and understandings related hereto shall be deemed to have been  
22 merged within it. No representations or terms of agreement other than those contained herein exist  
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

24 **7. GOVERNING LAW**

25 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California and apply within the State of California. In the event that Proposition 65 is repealed or  
27 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
28



1 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
2 to the extent that, Covered Products are so affected.

3 **8. NOTICES**

4 8.1 Unless specified herein, all correspondence and notices required to be provided  
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
6 class mail, (registered or certified), return receipt requested and email; or (ii) overnight courier and  
7 email to any party by the other party at the following addresses:

8 For Defendant:

9 Jeffrey M. Goldman  
10 Troutman Pepper Hamilton Sanders LLP  
11 5 Park Plaza, Suite 1400  
12 Irvine, CA 92614-2524  
13 [Jeffrey.Goldman@troutman.com](mailto:Jeffrey.Goldman@troutman.com)

14 CT Corporation System, as Agent for Service of Process for Walmart Inc.  
15 330 N. Brand Blvd  
16 Ste. 700  
17 Glendale, CA 91203

18 For Ferreiro:

19 Evan Smith  
20 Brodsky & Smith, LLC  
21 9595 Wilshire Blvd., Ste. 900  
22 Beverly Hills, CA 90212  
23 [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com)

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
28 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
the same document.

**10. DISMISSAL OF COMPLAINT**

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

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

3 11.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
5 Defendant agrees it shall support approval of such motion.

6 11.2 This Consent Judgment shall not be effective until it is approved and entered by the  
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
8 Parties agree to meet and confer on how to proceed and make a good faith attempt to resolve before  
9 a noticed motion is filed; if such agreement is not reached within 30 days, the case shall proceed  
10 on its normal course.

11 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
12 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
13 Judgment and shall make a good faith attempt to resolve before a noticed motion is filed. If the  
14 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course  
15 on the trial court's calendar.

16 **12. ENFORCEMENT OF CONSENT JUDGMENT**

17 12.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms  
18 of this Consent Judgment under Code of Civil Procedure § 664.6.

19 12.2 Ferreiro shall have the exclusive right to enforce the provisions of this Consent  
20 Judgment. Ferreiro represents and warrants neither he nor his agents or attorneys have assigned  
21 or otherwise transferred, or attempted to assign, or transfer, any claim or claims against Walmart.  
22 Ferreiro further warrants that neither he nor his agents or attorneys are aware of any other potential  
23 private enforcer or attorney who intends to bring litigation based on the 60-Day Notice.

24 12.3 To the extent Ferreiro identifies any Covered Product in the future which he  
25 believes is not in compliance with this Consent Judgment (or if Ferreiro believes that Walmart is  
26 in violation or noncompliance with this Consent Judgment in any respect), Ferreiro agrees to  
27 advise Walmart of such alleged breach in the manner set forth in Section 8, and provide Walmart  
28 with 20 business to cure any alleged violation of this Consent Judgment (the "Notice to Cure").

1 Such Notice to Cure to Walmart shall contain, to the extent known by Ferreiro, information  
2 sufficient for Walmart to identify the Covered Product such as the Covered Product's UPC  
3 (Universal Product Code) Number, the Walmart Order Number, and for Covered Products sold on  
4 Walmart.com, a screenshot of the Covered Product's online listing (also known as the product  
5 display page), including the Covered Product's URL (Uniform Resource Locator).

6 12.4 Ferreiro shall not be entitled to seek or recover any civil penalties, and Ferreiro and  
7 his counsel shall not be entitled to recovery or reimbursement of attorney's fees and/or costs, or  
8 any other available remedies arising from or related to Notices to Cure (or the alleged non-  
9 compliance with this Consent Judgment), provided Walmart timely remedies the alleged non-  
10 compliance within 20 business days of receiving the Notice to Cure by Walmart (1) delisting the  
11 Covered Product from Walmart.com, (2) prohibiting such Covered Product sold on Walmart.com  
12 from being shipped to an address in California, or (3) prohibiting such Covered Product from being  
13 sold at Walmart retail stores in California. If Walmart cures the alleged non-compliance within  
14 20 business days of receiving the Notice to Cure, Walmart shall not be deemed in breach or  
15 violation of this Consent Judgment in any respect. In the absence of Walmart curing within 20  
16 business days, Ferreiro may bring an action to enforce this Consent Judgment to seek additional  
17 civil penalties, reimbursement of reasonable attorney's fees and costs, and any other available  
18 remedies, or bring a new Proposition 65 action.

19 **13. MODIFICATION**

20 13.1 This Consent Judgment may be modified only by further stipulation of the Parties  
21 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

22 **14. ATTORNEY'S FEES**

23 14.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
24 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

25 14.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
26 pursuant to law.

27  
28

1 **15. AUTHORIZATION**

2 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 document and certify that he or she is fully authorized by the Party he or she represents to execute  
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

**AGREED TO:**

8  
9 Date: April 17/23  
10 By: Anthony Ferreiro  
11 ANTHONY FERREIRO

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Jeffrey Goldman  
Authorized Signatory for  
WALMART INC.

12  
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_ Judge of Superior Court

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **15. AUTHORIZATION**

2 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 document and certify that he or she is fully authorized by the Party he or she represents to execute  
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
6 explicitly provided herein each Party is to bear its own fees and costs.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: April 17, 2023

By: \_\_\_\_\_

By: 

ANTHONY FERREIRO

Jeffrey Goldman  
Authorized Signatory for  
WALMART INC.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court