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8 ANTHONY FERREIRO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 WALMART, INC.,

15 Defendant.

Case No.: CGC-20-584451

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Ethan P. Schulman
Dept.: 302
Hearing Date: March 28, 2022
Hearing Time: 9:30 AM
Reservation #:

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 di(2-ethylhexyl) phthalate (“DEHP”) without providing a clear and
12 reasonable exposure warning pursuant to Proposition 65. DEHP is listed pursuant to Proposition
13 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

14 **1.3 Notices of Violation/Complaint.** On May 15, 2019 (Waces Professional Exercise
15 Ball Kit) and January 30, 2020 (Deluxe Comfort Bath Cushion), Ferreiro served Walmart and
16 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code § 25249.7(d) (collectively, the “Notices”), alleging that
18 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Covered
19 Products expose users in California to DEHP. No public enforcer has brought and is diligently
20 prosecuting the claims alleged in the Notices. On May 14, 2020, Ferreiro filed a complaint (the
21 “Complaint”) in the above-referenced matter.

22 **1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has**
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Complaint based on the facts alleged
27 therein and/or in the Notices.

1 1.5 Defendant denies the material allegations contained in the Notices and Complaint
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means as follows:

10 (1) Waces Professional Exercise Ball Kit with Walmart Catalog Item ID 171195288 sold
11 by Taradex Inc. on walmart.com in California; and

12 (2) Deluxe Comfort Bath Cushion with Walmart Catalog Item ID 154994151 sold by AB
13 Marketers on walmart.com in California.

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

16 **3. INJUNCTIVE RELIEF**

17 3.1 As of the Effective Date, Taradex Inc. shall not sell the Waces Professional
18 Exercise Ball Kit with Walmart Catalog Item ID 171195288 on walmart.com to customers in
19 California and AB Marketers shall not sell the Deluxe Comfort Bath Cushion with Walmart Catalog
20 Item ID 154994151 on walmart.com to customers in California, unless a clear and reasonable
21 exposure warning pursuant to Proposition 65 is provided.

22 3.2 **Sell-Through Period.** The Parties agree that Covered Products manufactured,
23 distributed, shipped, sold or that are otherwise in the stream of commerce prior to the Effective
24 Date shall be subject to the release of liability pursuant to Section 5 of this Consent Judgment,
25 without regard to when the Covered Products were, or are in the future, sold to consumers.

26 3.3 **Right to Cure.**

27 To the extent Ferreiro identifies any Covered Product in the future which he believes is not
28 in compliance with the Consent Judgment (or should Ferreiro believe, claim, or allege that Walmart

1 has failed to comply with this Consent Judgment in any respect), Ferreiro shall advise Walmart in
2 writing of such alleged non-compliance in the manner set forth in Section 8, and provide Walmart
3 with twenty (20) business days (calculated from the date notice is provided electronically) to cure
4 any alleged violation of this Consent Judgment (pursuant to this Section 3.3). Such notice to
5 Walmart shall contain information sufficient for Walmart to identify the Covered Product and the
6 Covered Product’s seller and/or supplier including, but not limited to, the UPC or SKU number,
7 the Walmart Catalog ID Number, the name of the Covered Product, the seller and/or supplier of
8 the Covered Product, and a screenshot of the Covered Product’s online listing. Should Walmart
9 need additional information to identify the Covered Product at issue, Ferreiro shall work with
10 Walmart to provide additional information that will assist Walmart in its efforts to identify the
11 Covered Product at issue. If the alleged non-compliance is cured, Ferreiro shall take no further
12 action to enforce Proposition 65 or this Consent Judgment with respect to the alleged failure to
13 comply with the terms of this Consent Judgment, and the matter shall be deemed to be resolved.
14 Further, so long as Walmart cures the alleged non-compliance within the twenty (20) days, Walmart
15 shall not be in breach or violation of this Consent Judgment in any respect.

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** Walmart shall pay \$2,000 as a Civil Penalty pursuant to Health and
18 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
19 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
20 Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within fifteen (15) business days of the Effective Date, Walmart shall issue
22 two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500; and
23 to (b) “Brodsky & Smith, LLC” in the amount of \$500. Ferreiro agrees to provide IRS W-9 forms
24 for each of the following payees under this Consent Judgment within five (5) days after this Consent
25 Judgment is fully executed by the Parties. Payment owed to Ferreiro pursuant to this Section shall
26 be delivered to the following payment address:

1 Evan J. Smith, Esquire
2 Brodsky & Smith, LLC
3 Two Bala Plaza, Suite 510
4 Bala Cynwyd, PA 19004

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

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

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

21 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, Walmart
22 shall pay \$25,500 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
23 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
24 Walmart's attention, litigating and negotiating and obtaining judicial approval of a settlement in
25 the public interest, pursuant to Code of Civil Procedure § 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 Walmart, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, direct and indirect subsidiaries, partners, sister companies, and
affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities
from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products,
including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,
licensors, licensees retailers, franchisees, and cooperative members ("Downstream Releasees"), of
all claims for violations of Proposition 65 related to all Covered Products distributed or sold by

1 Walmart prior to the Effective Date (“Proposition 65 Claims”). Ferreiro, acting on his own behalf
2 and on behalf of the public interest, hereby releases Walmart, Defendant Releasees, and
3 Downstream Releasees from the Proposition 65 Claims and all claims for violations of Proposition
4 65 related to other products set forth in the Complaint. It is the Parties’ intent that this Consent
5 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
6 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
7 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
8 been brought pursuant to the Notices against Walmart and/or the Downstream Releasees of the
9 Covered Products. It is the Parties’ intent that compliance with the terms of this Consent Judgment
10 constitutes compliance with Proposition 65 with regard to 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 Downstream Releasees from any and all manner of actions, causes of
15 action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,
16 liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever,
17 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any
18 alleged violations of Proposition 65 related to or arising from Covered Products distributed or sold
19 by Walmart, Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers
20 and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits
21 which he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the
22 California Civil Code, which provides as follows:

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

27 5.3 Walmart waives any and all claims against Ferreiro, his attorneys and other
28 representatives, for any and all actions taken or statements made (or those that could have been

1 taken or made) by Ferreiro and his attorneys and other representatives with regard to this matter,
2 whether in the course of investigating claims related to this case or otherwise seeking enforcement
3 of Proposition 65 against it in the above-captioned action, and/or with respect to Covered Products.

4 **6. INTEGRATION**

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

9 **7. GOVERNING LAW**

10 7.1 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 or
12 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
13 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
14 to the extent that, Covered Products are so affected.

15 **8. NOTICES**

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

20 For Defendant:

21 Thomas L. Van Wyngarden
22 Pillsbury Winthrop Shaw Pittman LLP
23 725 South Figueroa Street, 36th Floor
24 Los Angeles, CA 90017-5524
25 tom.vanwyngarden@pillsburylaw.com

26 Stephanie Angkadjaja
27 Pillsbury Winthrop Shaw Pittman LLP
28 725 South Figueroa Street, 36th Floor
Los Angeles, CA 90017-5524
stephanie.angkadjaja@pillsburylaw.com

For Ferreiro:

Evan Smith

1 Brodsky & Smith, LLC
2 9595 Wilshire Blvd., Ste. 900
3 Beverly Hills, CA 90212
4 esmith@brodskysmith.com

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and
10 the same document.

11 **10. DISMISSAL OF COMPLAINT**

12 10.1 Plaintiff shall dismiss the Complaint (and this action) with prejudice within ten (10)
13 business days after the Effective Date. All claims and causes of action set forth in the Complaint
14 (and/or any amendments thereto) are hereby dismissed with prejudice.

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

17 11.1 Ferreiro agrees to comply with the requirements set forth in California Health &
18 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
19 Defendant agrees it shall support approval of such motion.

20 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
21 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
22 Parties agree to meet and confer on how to proceed and make a good faith attempt to resolve before
23 a noticed motion is filed; if such agreement is not reached within 30 days, the case shall proceed
24 on its normal course.

25 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
26 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
27 Judgment, and shall make a good faith attempt to resolve before a noticed motion is filed. If the
28 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course
on the trial court's calendar.

1 **12. ENFORCEMENT OF CONSENT JUDGMENT**

2 12.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
3 of this Consent Judgment under Code of Civil Procedure § 664.6.

4 12.2 Only the Parties may enforce the terms of this Consent Judgment.

5 12.3 In any action to enforce the terms of this Consent Judgment, the prevailing party
6 shall be entitled to recover its reasonable attorneys' fees and costs associated with bringing such
7 action. However, as noted in Section 3.3, Ferreiro must provide Walmart with written notice and
8 an opportunity to cure any alleged non-compliance with this Consent Judgment prior to filing any
9 motion seeking to enforce the terms of this Consent Judgment. If Walmart cures the alleged non-
10 compliance within the twenty (20) day period referenced in Section 3.3, Ferreiro shall not file any
11 motion with the Court (or take any other action) related to the alleged non-compliance.

12 **13. MODIFICATION**

13 13.1 This Consent Judgment may be modified only by further stipulation of the Parties
14 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

15 **14. ATTORNEY'S FEES**

16 14.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
17 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

18 14.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
19 pursuant to law.

20 **15. AUTHORIZATION**

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

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AGREED TO:

Date: 1/28/22
By: *Anthony Ferreiro*
ANTHONY FERREIRO

AGREED TO:

Date: December 31, 2021
By: *[Signature]*
Thomas L. Van Wyngarden
Authorized Signatory for
WALMART INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of Superior Court