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Attorneys for Plaintiff
ANTHONY FERREIRO

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

ANTHONY FERREIRO,

Plaintiff,

v.

WALMART, INC.,

Defendant.

Case No.: CGC-20-584451

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Ethan P. Schulman
Dept.: 302
Hearing Date: June 22, 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.**

28

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 supplied to Walmart by Taradex, Inc. with
11 Walmart Catalog Item ID 171195288 and sold on walmart.com in California; and

12 (2) Deluxe Comfort Bath Cushion supplied to Walmart by AB Marketers with Walmart
13 Catalog Item ID 154994151 sold 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, Walmart shall not sell the Waces Professional Exercise
18 Ball Kit supplied to Walmart by Taradex, Inc. with Walmart Catalog Item ID 171195288 on
19 walmart.com to customers in California, and Walmart shall not sell the Deluxe Comfort Bath
20 Cushion supplied to Walmart by AB Marketers with Walmart Catalog Item ID 154994151 on
21 walmart.com to customers in California, unless a clear and reasonable exposure warning pursuant
22 to Proposition 65 is provided.

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

1 **4. MONETARY TERMS**

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

6 4.1.1 Within fifteen (15) business days of the Effective Date, Walmart shall issue
7 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500; and
8 to (b) "Brodsky & Smith, LLC" in the amount of \$500. Ferreiro agrees to provide IRS W-9 forms
9 for each of the following payees under this Consent Judgment within five (5) days after this Consent
10 Judgment is fully executed by the Parties. Payment owed to Ferreiro pursuant to this Section shall
11 be delivered to the following payment address:

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

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

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

24 For Non-United States Postal Service Delivery:
25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street
Sacramento, CA 95814

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

4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, Walmart
shall pay \$25,500 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to

1 Walmart's attention, litigating and negotiating and obtaining judicial approval of a settlement in
2 the public interest, pursuant to Code of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
5 acting on his own behalf, and on behalf of the public interest, and Walmart, and its parents,
6 shareholders, members, directors, officers, managers, employees, representatives, agents,
7 attorneys, divisions, subdivisions, direct and indirect subsidiaries, partners, sister companies, and
8 affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities
9 from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products,
10 including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,
11 licensors, licensees retailers, franchisees, and cooperative members ("Downstream Releasees"), of
12 all claims for violations of Proposition 65 based on exposure to DEHP from use of Covered
13 Products as set forth in the Notices, with respect to any Covered Product distributed or sold by
14 Walmart prior to the Effective Date ("Proposition 65 Claims"). It is the Parties' intent that that this
15 Consent Judgment shall have preclusive effect such that no other person or entity, whether
16 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or
17 take any action with respect to any violation of Proposition 65 that was alleged in the Complaint,
18 or that could have been brought pursuant to the Notices against Walmart and/or the Downstream
19 Releasees with regard to exposure to DEHP from use of the Covered Products. It is the Parties'
20 intent that compliance with the terms of this Consent Judgment constitutes compliance with
21 Proposition 65 with regard to exposure to DEHP from use of the Covered Products.

22 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
23 agents, representatives, attorneys, and successors and/or assignees, hereby waives all rights to
24 institute or participate in, directly or indirectly, any form of legal action and releases Walmart,
25 Defendant Releasees, and Downstream Releasees from any and all manner of actions, causes of
26 action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises,
27 liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever,
28 known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any

1 alleged violations of Proposition 65 related to or arising from Covered Products distributed or sold
2 by Walmart, Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers
3 and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits
4 which he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the
5 California Civil Code, which provides as follows:

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

12 5.3 Walmart waives any and all claims against Ferreiro, his attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Ferreiro and his attorneys and other representatives with regard to this matter,
15 whether in the course of investigating claims related to this case or otherwise seeking enforcement
16 of Proposition 65 against it in the above-captioned action, and/or with respect to Covered Products.

17 **6. INTEGRATION**

18 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
19 any and all prior negotiations and understandings related hereto shall be deemed to have been
20 merged within it. No representations or terms of agreement other than those contained herein exist
21 or have been made by any Party with respect to the other Party or the subject matter hereof.

22 **7. GOVERNING LAW**

23 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed or
25 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
26 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
27 to the extent that, Covered Products are so affected.

28 **8. NOTICES**

8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class mail, (registered or certified), return receipt requested and email; or (ii) overnight courier and
2 email to any party by the other party at the following addresses:

3 For Defendant:

4 Thomas L. Van Wyngarden
5 Pillsbury Winthrop Shaw Pittman LLP
6 725 South Figueroa Street, 36th Floor
7 Los Angeles, CA 90017-5524
8 tom.vanwyngarden@pillsburylaw.com

9 Stephanie Angkadjaja
10 Pillsbury Winthrop Shaw Pittman LLP
11 725 South Figueroa Street, 36th Floor
12 Los Angeles, CA 90017-5524
13 stephanie.angkadjaja@pillsburylaw.com

14 For Ferreiro:

15 Evan Smith
16 Brodsky & Smith, LLC
17 9595 Wilshire Blvd., Ste. 900
18 Beverly Hills, CA 90212
19 esmith@brodskysmith.com

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

26 **10. DISMISSAL OF COMPLAINT**

27 10.1 Plaintiff shall dismiss the Complaint (and this action) with prejudice within ten (10)
28 business days after the Effective Date. All claims and causes of action set forth in the Complaint
(and/or any amendments thereto) are hereby dismissed with prejudice.

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

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

1 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
3 Parties agree to meet and confer on how to proceed and make a good faith attempt to resolve before
4 a noticed motion is filed; if such agreement is not reached within 30 days, the case shall proceed
5 on its normal course.

6 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
7 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
8 Judgment and shall make a good faith attempt to resolve before a noticed motion is filed. If the
9 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course
10 on the trial court's calendar.

11 **12. ENFORCEMENT OF CONSENT JUDGMENT**

12 12.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
13 of this Consent Judgment under Code of Civil Procedure § 664.6.

14 12.2 Only the Parties may enforce the terms of this Consent Judgment.

15 12.3 Either Party may by motion seek to enforce the terms of this Consent Judgment.
16 However, prior to filing any such motion, the Party seeking to enforce this Consent Judgment shall
17 provide the allegedly violating Party with a written notice setting for the detailed factual and legal
18 basis for the alleged violations ("Notice of Violation"). The Parties shall then meet and confer in
19 good faith during the thirty (30) day period following the date the Notice of Violation was sent in
20 an effort to try to reach agreement on an appropriate cure, penalty, and/or attorneys' fees related to
21 the alleged violation (or the Parties might agree that there was no violation). If no agreement can
22 be reached among the Parties during the 30-day period, the Party seeking to enforce the provisions
23 of this Consent Judgment may thereafter move forward with filing a motion with the Court.

24 12.4 In any action to enforce the terms of this Consent Judgment, the prevailing party
25 shall be entitled to recover its reasonable attorneys' fees and costs associated with bringing such
26 action as long as the procedure set forth in Paragraph 12.3 above is followed.

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1 **13. MODIFICATION**

2 13.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **14. ATTORNEY'S FEES**

5 14.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

7 14.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
8 pursuant to law.

9 **15. AUTHORIZATION**

10 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: 3/25/2022

Date: March 25, 2022

18 By: Anthony Ferreiro
19 ANTHONY FERREIRO

By: [Signature]

20 Thomas L. Van Wyngarden
21 Authorized Signatory for
22 WALMART INC.

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

24
25 Dated: _____

Judge of Superior Court