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14 *Attorneys for Plaintiffs*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

13 ANTHONY FERREIRO, PRECILA BALABBO,
14 EMA BELL, KINGPUN CHENG, GABRIEL
15 ESPINOZA,

16 Plaintiffs,

17 v.

18 ELITE HOME PRODUCTS, INC.

19 Defendant.

Case No.: RG20063575

CONSENT JUDGMENT

Judge: Julia Spain

Dept.: 520

Hearing Date: August 12, 2020

Hearing Time: 2:00 PM

Reservation #: R-2183640

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between plaintiffs Ema
3 Bell (“Bell”), Anthony Ferreiro (“Ferreiro”), Precila Balabbo (“Balabbo”), Gabriel Espinoza
4 (“Espinoza”), and Kingpun Cheng (“Cheng”) acting on behalf of the public interest (hereinafter
5 “Plaintiffs”) and defendant Elite Home Products, Inc. (“Elite Home” or “Defendant”) with
6 Plaintiffs and Defendant collectively referred to as the “Parties” and each of them as a “Party.”
7 Plaintiffs are individuals residing in California that seek to promote awareness of exposures to toxic
8 chemicals and improve human health by reducing or eliminating hazardous substances contained
9 in consumer products. Elite Home is alleged to be a person in the course of doing business for
10 purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

11 **1.2 Allegations and Representations.** Plaintiffs alleges that Defendant has exposed
12 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of carry/storage cases for bedding
13 products including, but not limited to, sheets, shams, quilts and /or pillowcases supplied by Elite
14 Home for sale in California without providing a clear and reasonable exposure warning pursuant to
15 Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California
16 to cause cancer and reproductive toxicity.

17 **1.3 Notices of Violation/Complaint.**

18 **1.3.1** On or about December 4, 2018, plaintiff Cheng served The TJX Companies,
19 Inc. (“TJX”) and various public enforcement agencies with a document entitled “60-Day
20 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “2018 Notice”),
21 alleging that TJX violated Proposition 65 by failing to warn consumers and customers that
22 use of carry/storage cases for DreamScape bedding exposes users in California to DEHP.
23 Elite Home was subsequently identified as the manufacturer and supplier of the
24 DreamScape sheet carry/storage case and entered negotiations with Cheng as indemnitor to
25 TJX to resolve Cheng’s claims concerning the products identified in the 2018 Notice.

26 **1.3.2** On or about July 23, 2019, plaintiffs Ferreiro, Bell and Balabbo served Elite
27 Home, Ross Stores, Inc. (“Ross”), TJX, and various public enforcement agencies with a
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1 document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
2 §25249.7(d) (the “July 2019 Notice”), alleging that Elite Home violated Proposition 65 by
3 failing to warn consumers and customers that use of storage/carry cases for Hotel Rosemont
4 Luxury Collection pillowcases, Fiona & Maddox sheet sets, and Palmetto Bay Coastal
5 Collection pillowcases exposes users in California to DEHP.

6 1.3.3 On or about October 25, 2019, plaintiff Espinoza served TJX, Marshalls of
7 MA, Inc. (“Marshalls”), and various public enforcement agencies with a document entitled
8 “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “October
9 2019 Notice”), alleging that TJX and Marshalls violated Proposition 65 for failing to warn
10 consumers and customers that use of storage/carry cases for Inspirational Collection sheet
11 sets exposes users in California to DEHP. Elite Home was subsequently identified as the
12 manufacturer and supplier of the Inspirational Collection sheet sets carry/storage case and
13 entered negotiations with Espinoza as indemnitor to TJX and Marshalls to resolve
14 Espinoza’s claims concerning the products identified in the October 2019 Notice.

15 1.3.4 On or about January 9, 2020, Plaintiff Ferreiro served Ross and various
16 public enforcement agencies with a document entitled “60-Day Notice of Violation”
17 pursuant to Health & Safety Code § 25249.37 (the “January 2020 Notice”), alleging that
18 Ross violated Proposition 65 for failing to warn consumers and customers that use of
19 storage/carry cases for Luna & Chase sheet sets exposes users in California to DEHP. Elite
20 Home was subsequently identified as the manufacturer and supplier of the Luna & Chase
21 sheet sets carry/storage case and entered negotiations with Ferreiro as indemnitor to Ross
22 to resolve Ferreiro’s claims concerning the products identified in the January 2020 Notice.

23 1.3.5 The 2018 Notice, July 2019 Notice, October 2019 Notice, and January 2020
24 Notice shall be referred to collectively as the “Notices.”

25 1.3.6 No public enforcer has brought and is diligently prosecuting the claims
26 alleged in the Notices. On June 3, 2020, Plaintiffs filed a complaint (the “Complaint” or the
27 “Action”) in the matter.
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1 1.3.7 This settlement is entered into among the Parties as a global settlement of all
2 claims brought by Plaintiffs in the Notices served on Elite Home and on TJX, Marshalls,
3 and Ross and its affiliates and subsidiaries regarding alleged exposures to DEHP and other
4 Listed Phthalates (identified herein) in Covered Products supplied by Elite Home.

5 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
7 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
8 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
9 claims which were or could have been raised in the Action based on the facts alleged therein and/or
10 in the Notices.

11 1.5 Defendant denies the material allegations contained in the Notices and Complaint
12 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
13 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
14 shall compliance with this Consent Judgment constitute or be construed as an admission by
15 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
16 denied by Defendant. However, this Section shall not diminish or otherwise affect the obligations,
17 responsibilities, and duties of Defendant under this Consent Judgment.

18 2. DEFINITIONS

19 2.1 **Covered Products.** The term “Covered Products” means carry/storage cases for
20 bedding products including, but not limited to, sheets, shams, quilts and /or pillowcases supplied
21 by Elite Home for sale in California, including, but not limited to, the Covered Products sold under
22 the brand names listed on Exhibit A.

23 2.2 **Listed Phthalates.** The term “Listed Phthalates” means DEHP, butyl benzyl
24 phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), di-n-hexyl
25 phthalate (DnHP), and diisononyl phthalate (DINP).

26 2.3 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
27 entered as a Judgment of the Court.
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1 **3. INJUNCTIVE RELIEF: WARNINGS**

2 **3.1 Reformulation of Covered Products.** As of the Effective Date, and continuing
3 thereafter, Elite Home shall ensure that Covered Products that it manufactures, imports, distributes,
4 sells or offers for sale in California are either: (a) Reformulated Products pursuant to § 3.2, below;
5 or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.

6 **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products
7 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of each of the
8 Listed Phthalates when analyzed pursuant to U.S. Environmental Protection Agency testing
9 methodologies 3580A and 8270C or other methodology utilized by federal or state government
10 agencies for the purpose of determining the phthalate content in a solid substance.

11 **3.3 Clear and Reasonable Warning.** As of the Effective Date, a clear and reasonable
12 exposure warning as set forth in this §§ 3.3 and 3.4 must be provided by Elite Home for all Covered
13 Products that it manufactures, imports, distributes, sells, or offers for sale in California that are not
14 Reformulated Products. There shall be no obligation for Defendant to provide a warning for
15 Covered Products shipped by Elite Home prior to the Effective Date for sale in California. The
16 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),
17 respectively¹:

18 **3.4 Warning Language:**

19 **3.4.1 Warning:**

20 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
21 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause

22
23 ¹ To the extent Defendant determines that the Covered Products for which a warning
24 statement is required under § 3.3 above does not contain DEHP in concentrations in excess of
25 1,000 ppm, if it chooses not to use an **Alternative Warning**, it shall substitute the name of at
26 least one of the Listed Phthalates present in concentrations greater than 1,000 ppm in the Covered
27 Products for DEHP in the **Warning** shown in § 3.3(a) above. In this event, if Defendant has
28 determined that the concentration of DINP in the Covered Product is 1,000 ppm or less, it shall
delete the term “cancer and” from the warning statement shown in either §§ 3.3(a) or 3.3(b)
above. Alternatively, if the only Listed Phthalate present in concentrations greater than 1,000 ppm
in the Covered Product is determined by Defendant to be DINP, then in addition to identifying it
instead of DEHP, Defendant shall delete the reference to reproductive harm effects in using either
of the warning statements shown in §§ 3.3(a) and 3.3(b) above.

1 cancer and birth defects or other reproductive harm. For more information go to
2 www.P65Warnings.ca.gov.

3 3.4.2 **Alternative Warning:**

4  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

5 3.5 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
6 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
7 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
8 triangle with a black outline, except that if the sign or label for the Covered Product does not use
9 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
10 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
11 Covered Products’ packaging or labeling and displayed with such conspicuousness, as compared
12 with other words, statements, or designs as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use.

14 3.6 If Defendant sells Covered Products via an internet website to customers located in
15 California, the warning requirements of this section shall be satisfied if the foregoing warning
16 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
17 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
18 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
19 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
20 to or immediately following the display, description, price, or checkout listing of the Covered
21 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
22 associates it with the product(s) to which the warning applies.

23 3.7 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
24 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
25 Judgment or by complying with warning requirements adopted by the State of California’s Office
26 of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.
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1 **4. MONETARY TERMS**

2 4.1 Within fourteen (14) days of the date this Consent Judgment is fully executed by the
3 Parties, Elite Home shall pay \$12,500, one half of the total monetary settlement amount of \$25,000,
4 into its counsel Norton Rose Fulbright's client trust account. Elite Homes shall deposit the
5 remaining balance, \$12,500, of the total monetary settlement to its counsel Norton Rose Fulbright's
6 client trust account no later than June 15, 2020. Within fifteen (15) business days of the Effective
7 Date, and on the condition that Elite Homes has paid the total monetary settlement amount into
8 Norton Rose Fulbright's client trust account, Norton Rose Fulbright shall issue payments out of the
9 client trust account as stated in Sections 4.2 and 4.3 of this Consent Judgment.

10 4.2 **Civil Penalty.** \$3,000.00 as a Civil Penalty pursuant to Health and Safety Code
11 section 25249.7(b), is to be apportioned in accordance with California Health & Safety Code §
12 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty
13 remitted to Plaintiffs, as provided by California Health & Safety Code § 25249.12(d).

14 4.1.1 Three (3) separate checks for the Civil Penalty payment to (a) "OEHHA"
15 in the amount of \$2,250.00; to (b) "Brodsky & Smith, LLC in Trust for Bell, Ferreiro, Balabbo,
16 and Espinoza" in the amount of \$600.00; and to (c) "Sy & Smith, PC in Trust for Cheng" in the
17 amount of \$150.00. Payment owed to Plaintiffs pursuant to this Section shall be delivered to the
18 following payment address:

19 Evan J. Smith, Esquire
20 Brodsky & Smith, LLC
21 Two Bala Plaza, Suite 510
22 Bala Cynwyd, PA 19004

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

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
 P.O. Box 4010
 Sacramento, CA 95812-4010

 For Non-United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

6 4.2.1 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith,
7 LLC at the address set forth above as proof of payment to OEHHA.

8 4.3 **Attorneys' Fees.** \$22,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as
9 complete reimbursement for Plaintiffs' attorneys' fees and costs incurred as a result of
10 investigating, bringing this matter to Defendant's attention, litigating and negotiating and obtaining
11 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

12 4.3.1 Within thirty (30) days of the Effective Date, Brodsky Smith shall pay
13 \$8,290.00 to Sy & Smith, PC as complete reimbursement for plaintiff Cheng's attorneys'
14 fees and costs incurred in the Action, and the \$150 reimbursement of plaintiff Cheng's
15 portion of the Civil Penalty. Payment owed to Sy & Smith, PC pursuant to this Section shall
16 be delivered by Brodsky Smith directly to Sy & Smith, PC at the following address:

17 Parker A. Smith
18 Sy & Smith, PC
19 11622 El Camino Real
20 Suite 100
21 San Diego, CA 92130

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiffs
24 acting on their own behalf, and on behalf of the public interest, and Elite Home, and its respective
25 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates
27 ("Defendant Releasees"), and all entities from whom it obtains and to whom it directly or indirectly
28 distributes or sell Covered Products, including but not limited to manufacturers, suppliers,
distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative
members, including but not limited to TJX and Ross and their respective parents, shareholders,
members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,

1 subdivisions, subsidiaries, partners, sister companies, and affiliates ("Downstream Releasees"), of
2 all claims for violations of Proposition 65 that were or could have been brought based on exposure
3 to DEHP from Covered Products as set forth in the Notices, with respect to any Covered Products
4 manufactured, distributed, or sold by Defendant prior to the Effective Date². As of the Effective
5 Date, compliance with the terms of this Consent Judgment shall be deemed to constitute compliance
6 with Proposition 65 with regard to Listed Phthalates in the Covered Products.

7 5.2 In addition to the foregoing, Plaintiffs, on behalf of themselves, their past and
8 current agents, representatives, attorneys, and successors and/or assignees, and not in their
9 representative capacity, hereby waive all rights to institute or participate in, directly or indirectly,
10 any form of legal action and releases Defendant, Defendant Releasees, and Downstream Releasees
11 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
12 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
13 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
14 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
15 from exposure to Listed Phthalates in Covered Products manufactured, distributed, or sold by
16 Defendant, Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers
17 and releases in this paragraph, Plaintiffs hereby specifically waive any and all rights and benefits
18 which they now have, or in the future may have, conferred by virtue of the provisions of § 1542 of
19 the California Civil Code, which provides as follows:

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

26 ² Without prejudice to the rights public prosecutors authorized to represent the People
27 pursuant to Health & Safety Code § 25249.7(c) may otherwise have, this Consent Judgment shall
28 have preclusive effect such that no other potential plaintiff, whether purporting to act in his, her,
or its interests or the public interest, shall be permitted to pursue and/or take any action against
Defendant, Defendant Releasees, and/or the Downstream Releasees with respect to any violation
of Proposition 65 that was alleged in the Complaint or that otherwise could have been brought
pursuant to the allegations set forth in the Notices.

1 5.3 Defendant waives any and all claims against Plaintiffs, their attorneys and other
2 representatives, for any and all actions taken or statements made (or those that could have been
3 taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
5 and/or with respect to Covered Products.

6 **6. INTEGRATION**

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

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent that, Covered Products are so affected.

17 **8. NOTICES**

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

22 For Elite Home:

23 Scott Perretz
24 Elite Home Products Inc.
25 95 Mayhill Street
26 Saddle Brook, NJ 07663

27 With a copy to:

28 Jeffrey Margulies
 Norton Rose Fulbright US LLP
 555 South Flower Street, Forty-First Floor

1 Los Angeles, CA 90071

2 For plaintiffs Bell, Ferreiro, Balabbo and Espinoza:

3 Evan Smith
4 Brodsky & Smith, LLC
5 9595 Wilshire Blvd., Ste. 900
6 Beverly Hills, CA 90212

7 And

8 For plaintiff Cheng:

9 Parker A. Smith
10 Sy & Smith, PC
11 11622 El Camino Real, Ste. 100
12 San Diego, CA 92130

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

16 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and
18 the same document.

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

21 10.1 Plaintiffs agree to comply with the requirements set forth in California Health &
22 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
23 Defendants agree they shall support approval of such Motion.

24 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
25 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
26 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
27 days, the case shall proceed on its normal course.

28 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent

Judgment. If the 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.

11. MODIFICATION

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

12. ATTORNEY'S FEES

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

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

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

14. AUTHORIZATION

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

AGREED TO:

Date:

6/11/2020

By:

ANTHONY FERREIRO

AGREED TO:

Date:

6/11/2020

By:

EMA BELL

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AGREED TO:

Date: 06/09/2020

By: 
PRECILA BALABBO

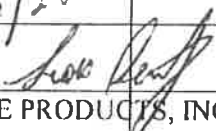
AGREED TO:

Date: 2020-6-8

By: 
KINGPIN CHENG

AGREED TO:

Date: 6/2/20

By: 
ELITE HOME PRODUCTS, INC.

AGREED TO:

Date: 6/11/2020

By: 
GABRIEL ESPINOZA

IT IS SO ORDERED, ADJUDGED AND
DECREED:

d: _____

Judge of Superior Court