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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 ROSS STORES, INC.,

15 Defendants.

Case No.: RG20076550

CONSENT JUDGMENT

Judge: Hon. Jenna Whitman

Dept.: 24

Hearing Date: October 27, 2022

Hearing Time: 9:00 AM

Reservation #: 183463275600

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Ross Stores, Inc. (“Ross” or
4 “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them
5 as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. Ross is alleged to be a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of are (1) Three Piece Sheet Set;
11 and (2) Red Handbag without providing a clear and reasonable exposure warning pursuant to
12 Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California
13 to cause cancer and reproductive toxicity.

14 1.3 **Notice of Violation/Complaint.**

15 1.3.1 On or about March 16, 2020, Balabbo served Ross, various public
16 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
17 Safety Code §25249.7(d) (the “March 16, 2020 Notice”), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of Three Piece Sheet Set
19 expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting
20 the claims alleged in the Notice.

21 1.3.2 On or about September 5, 2019, Balabbo served Ross, various public
22 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
23 Safety Code §25249.7(d) (the “September 5, 2019 Notice”), alleging that Defendant violated
24 Proposition 65 for failing to warn consumers and customers that use of Red Handbag expose users
25 in California to DEHP.

1 1.3.3 On September 28, 2020, Balabbo filed the instant complaint (the
2 “Complaint”) setting forth violations of Proposition 65 for both the Three Piece Sheet Set and Red
3 Handbag as alleged in the March 16, 2020 Notice and September 5, 2019 Notice.

4 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
6 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
7 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
8 claims which were or could have been raised in the Complaint based on the facts alleged therein
9 and/or in the Notices.

10 1.5 Defendant denies the material allegations contained in Balabbo’s Notices and
11 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
12 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
13 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
14 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
15 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
16 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

17 **2. DEFINITIONS**

18 2.1 **Three Piece Sheet Set.** The Term “Three Piece Sheet Set” shall mean Three Piece
19 Sheet Set Plastic Bag/Case with SKU 400198934222.

20 2.2 **Red Handbag.** The term “Red Handbag” shall mean Red Handbag with SKU
21 400196790318.

22 2.3 **Covered Products.** The term “Covered Products” means (1) Three Piece Sheet Set
23 Plastic Bag/Case with SKU 400198934222; and (2) Red Handbag with SKU 400196790318.

24 2.4 **Notices.** The term “Notices” shall mean the March 16, 2020 Notice and September
25 5, 2019 Notice as described in Sections 1.3.1 and 1.3.2.

26 2.5 **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.** After the Effective date, Ross shall not order
3 any Covered Products for sale into California, unless the Covered Products are either: (a)
4 Reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
5 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated
6 Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
7 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

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

13 **3.3 Clear and Reasonable Warning.** After the Effective Date, and continuing
14 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
15 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
16 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
17 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
18 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
19 described in §§ 3.3(a) or (b), respectively:

20 (a) **Warning.** The “Warning” shall consist of the statement:

21 ⚠ **WARNING:** This product can expose you to chemicals including di(2-
22 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
23 cancer and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

24 (b) **Alternative Warning:** Ross may, but is not required to, use the alternative short-
25 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

27 (c) Ross may use any form of “safe harbor” warning set forth in Proposition 65
28 regulations that are adopted at the time it places a Product in the stream of commerce.

1 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
2 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Covered Product does not use
5 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
6 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
7 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
8 automatic process, providing that the warning is displayed with such conspicuousness, as compared
9 with other words, statements, or designs as to render it likely to be read and understood by an
10 ordinary individual under customary conditions of purchase or use. A warning may be contained
11 in the same section of the packaging, labeling, or instruction booklet that states other safety
12 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
13 those other safety warnings.

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

24 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
25 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
26 Judgment or by complying with warning requirements adopted by the State of California’s Office
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1 of Environmental Health Hazard Assessment (“OEHHA”) applicable to the product and the
2 exposure at issue after the Effective Date.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Ross shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
5 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
6 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining
7 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code
8 § 25249.12(d).

9 4.1.1 Within fourteen (14) business days of the Effective Date, Ross shall issue
10 two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00;
11 and to (b) “Brodsky & Smith in Trust for Balabbo” in the amount of \$250.00. Payment owed to
12 Balabbo pursuant to this Section shall be delivered to the following payment address:

13 Evan J. Smith, Esquire
14 Brodsky & Smith
15 Two Bala Plaza, Suite 805
16 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

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

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

1 4.2 **Attorneys' Fees.** Within fourteen (14) business days of the Effective Date, Ross
2 shall pay \$18,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for
3 Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to Ross
4 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
5 interest, pursuant to Code of Civil Procedure § 1021.5.

6 **5. RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
8 acting on her own behalf, and on behalf of the public interest, and Ross, and its parents,
9 shareholders, members, directors, officers, managers, employees, representatives, agents,
10 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
11 predecessors, successors and assigns ("Defendant Releasees"), and all entities to whom they
12 directly or indirectly distribute or sell Covered Products, including but not limited to, distributors,
13 wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members
14 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
15 DEHP from use of the Covered Products as set forth in the Notices, with respect to any Covered
16 Products manufactured, distributed, or sold by Ross prior to the Effective Date. It is the Parties'
17 intention that this Consent Judgment shall have preclusive effect such that no other actions by
18 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
19 permitted to pursue and/or take any action with respect to any violation of Proposition 65 based on
20 exposure to DEHP that was alleged in the Complaint, or that could have been brought pursuant to
21 the Notices against Ross and/or the Downstream Releasees of the Covered Products ("Proposition
22 65 Claims"). Third party internet sellers who do not provide a warning in compliance with §§ 3.4,
23 above are expressly not covered by this release.

24 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
25 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative
26 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
27 legal action and releases Ross, Defendant Releasees, and Downstream Releasees from any and all
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1 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
2 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
3 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
4 future, with respect to any alleged violations of Proposition 65 related to or arising from exposure
5 to DEHP from Covered Products manufactured, distributed, or sold by Ross, Defendant Releasees
6 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
7 Balabbo hereby specifically waives any and all rights and benefits which she now has, or in the
8 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
9 provides as follows:

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

14 5.3 Ross waives any and all claims against Balabbo, her 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 Balabbo and her attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
18 and/or with respect to exposure to DEHP from Covered Products.

19 **6. INTEGRATION**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
21 prior negotiations and understandings related hereto shall be deemed to have been merged within
22 it. No representations or terms of agreement other than those contained herein exist or have been
23 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. If Proposition 65 is repealed or is otherwise
27 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
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1 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
2 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, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
7 by the other party at the following addresses:

8 For Defendant:

9 General Counsel
10 Ross Stores, Inc.
11 5130 Hacienda Drive
12 Dublin, CA 94568

13 Jeffrey Margulies
14 Norton Rose Fulbright US LLP
15 555 South Flower Street, Forty-First Floor,
16 Los Angeles, California 90071

17 And

18 For Balabbo:

19 Evan Smith
20 Brodsky & Smith
21 9595 Wilshire Blvd., Ste. 900
22 Beverly Hills, CA 90212

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

26 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and
28 the same document.

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

3 10.1 Balabbo 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 10.2 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 if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court’s calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY’S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party’s reasonable attorney’s fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood and agree to all of the terms and conditions of this
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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:

AGREED TO:

Date: _____

Date: 7/20/2022

By: _____
PRECILA BALABBO

By: Tracey Meyer
ROSS STORES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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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:

AGREED TO:

Date: 07/08/2022

Date: _____

By: 
PRECILA BALABBO

By: _____
ROSS STORES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court