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9 Victoria Jamison

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 VICTORIA JAMISON, an individual

13 Plaintiff,

14 v.

15 OVERSTOCK.COM, a Delaware corporation;
16 UNIVERSAL DIRECT BRANDS, LLC, an Ohio
17 limited liability company; and DOES 1 through 10

18 Defendants.

Case No.: 37-2020-00022316-CU-MC-CTL

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT UNIVERSAL
DIRECT BRANDS, LLC**

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement Act
of 1986 (*Health & Safety Code, § 25249.5,
et seq.*)

Action Filed: June 24, 2020

19
20 Plaintiff Victoria Jamison (“Jamison”) and Defendant Universal Direct Brands, LLC
21 (“Defendant”) enter into this Proposed Stipulated Consent Judgment (“Consent Judgment”) to settle
22 Jamison’s allegations in her Complaint brought under Cal. Health & Safety Code §§ 25249.5 *et seq.*
23 (“Proposition 65”). The effective date of this Consent Judgment shall be the date upon which the
24 Court approves and enters this Consent Judgment (the “Effective Date”). Defendant and Jamison
25 are collectively referred to herein as the “Parties” and individually as a “Party.”
26
27
28

1 **1. INTRODUCTION**

2 1.1 Jamison is an individual residing in the State of California who seeks to promote
3 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
4 hazardous substances contained in consumer products.

5 1.2 Jamison alleges that Defendant is a person in the course of doing business as that
6 term is defined in Proposition 65, which Defendant does not dispute for the sole purpose of this
7 Consent Judgment and the resolution of the subject claims.

8 1.3 Jamison alleges that Defendant has been responsible for the distribution and/or sale,
9 in the State of California, of a Change Coin Purse Pouch (the “Covered Products”) that exposes
10 users of the Covered Products to Diethylhexylphalate (“DEHP”) without first providing “clear and
11 reasonable warning” as required under Proposition 65. DEHP is listed as a chemical known to
12 cause cancer and reproductive harm pursuant to Proposition 65. Defendant denies Jamison’s claims
13 and maintains that the Covered Products comply with Proposition 65 and all applicable laws. The
14 Covered Products include Covered Products sold in California.

15 1.4 On or about April 17, 2020, Jamison served Defendant and various public
16 enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public
17 enforcers and the noticed entities with notice of alleged violations of Proposition 65 for failing to
18 warn consumers of the presence of DEHP in the Covered Products (the “Notice”). On June 24,
19 2020, Jamison filed the complaint in this action.

20 1.5 The Parties enter into this Consent Judgment to settle disputed claims and defenses
21 in this action.

22 1.6 By execution of this Consent Judgment, the Parties do not admit any facts or
23 conclusions of law, including, but not limited to, any facts or conclusions of law regarding any
24 violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine.
25 Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law, except with respect to an action seeking to
27 enforce the terms of this Consent Judgment. Nothing in this Consent Judgment, nor compliance
28 with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an

1 admission or evidence of fault, wrongdoing, or liability by Defendant, its officers, directors,
2 employees, members, managers, shareholders, equity owners, parents, subsidiaries or affiliated
3 corporations, in any administrative or judicial proceeding or litigation in any court, agency, or
4 forum. Except for the allegations settled and compromised, nothing in this Consent Judgment shall
5 prejudice, waive, or impair any right, remedy, argument, or defense that the parties may have
6 against one another in any other pending legal proceeding as to allegations unrelated to this action
7 or claims released herein.

8 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
9 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
10 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of San
11 Diego, and that this Court has jurisdiction to enter and enforce this Consent Judgment.

12 **2. RELEASE**

13 2.1 This Consent Judgment is a full, final, and binding resolution between Jamison, on
14 behalf of herself and her past and current agents, representatives, attorneys, successors, and
15 assignees (collectively, the “Releasers”), and on behalf of the public interest, and (a) Defendant,
16 and its directors, officers, employees, attorneys, agents, parents, and subsidiaries, and each entity to
17 whom Defendant directly or indirectly distributes or sells Covered Products, including, but not
18 limited to (a) downstream distributors (including Bandwagon, Inc.), wholesalers, customers, and
19 retailers; (b) all distributors, wholesalers, customers, retailers (including Defendant Overstock.com,
20 Inc.), franchisees, cooperative members; and (c) all past and current owners, parents, subsidiaries,
21 affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, agents,
22 attorneys, predecessors, successors, and assigns of the entities and individuals identified in (a), (b),
23 and (c), above (collectively, the “Releasees”), based on its failure to warn under Proposition 65
24 about alleged exposures to DEHP contained in the Covered Product that were manufactured,
25 distributed, sold, or offered for sale to a California customer before the Effective Date (the date this
26 Proposed Consent Judgment is signed by the Parties).

27 2.2 Jamison, on behalf of herself and Releasers, and in the public interest, waives all
28 rights to institute or participate in, directly or indirectly, any form of legal action, and discharges

1 and releases all claims, actions, causes of action (in law or in equity), suits, liabilities, demands,
2 obligations, damages, costs, fines, penalties, losses, expenses and fees (including, but not limited to,
3 investigation fees, expert fees, and attorney's fees), and expenses (collectively, "Claims"), for
4 violations of Proposition 65 alleged in the Notice and the Action from the failure to provide
5 warnings for alleged exposures to DEHP from Covered Products manufactured before the Effective
6 Date. Compliance by Defendant with Section 3 of this Consent Judgment shall be deemed to
7 constitute compliance by Defendant and any Releasee with Proposition 65 with respect to any
8 DEHP in the Covered Products manufactured on or after the Effective Date. Jamison, on behalf of
9 herself and Releasors, also releases and discharges Releasees from any other statutory or common
10 law claim arising from or relating to alleged exposures to DEHP in the Covered Products.

11 2.3 Defendant, on behalf of itself and Releasees, hereby waives any and all claims
12 against Releasors for any and all actions taken or statements made by Jamison or Releasors in the
13 course of investigating claims or otherwise seeking to enforce Proposition 65 against Defendant in
14 this action.

15 2.4 It is possible that other claims not known to the Parties arising out of the facts
16 alleged in the Notice and relating to the Covered Products will develop or be discovered. Jamison,
17 on behalf of herself and Releasors, on one hand, and Defendant, on behalf of itself and Releasees on
18 the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include
19 all such claims up through the Effective Date, including all rights of action therefor. The Parties
20 acknowledge that the claims released in Section 2.2 and 2.3 above may also include unknown
21 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims.

22 California Civil Code section 1542 reads as follows:

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


27 The Parties each acknowledge and understand the significance and consequences of this specific
28 waiver of California Civil Code section 1542.

1 2.5 Within 10 days of receipt of settlement payment from Defendant, Jamison shall file a
2 request for dismissal of Defendant Overstock.com, Inc.

3 **3. INJUNCTIVE TERMS**

4 3.1 After the Effective Date, Defendant shall not sell any Covered Products directly to
5 consumers in California or to retailers or distributors that Defendant knows will in turn sell to
6 consumers in California the Covered Products that Defendant sells to them, unless Defendant
7 provide the following warning statement:

8 **Option 1:**

9  **WARNING:** This product can expose you to [chemicals including]
10 Diethylhexylphalate (“DEHP”), which is known to the State of California to cause cancer
11 and birth defects or other reproductive harm. For more information, go to
www.P65Warnings.ca.gov.

12 Terms in bracketing are optional. The word “**WARNING**” shall be displayed in all capital
13 letters and bold print on the Covered Products or their packaging. This warning statement shall be
14 prominently displayed on the Covered Product, on the packaging of the Covered Product, or on a
15 placard, shelf tag, or sign, provided that the statement is displayed with such conspicuousness, as
16 compared with other words, statements, or designs as to render it likely to be read and understood
17 by an ordinary individual prior to sale. If the warning statement is displayed on the Product’s label,
18 it must be set off from other surrounding information and enclosed in a text box. If the warning
19 statement is displayed on a placard, shelf tag, or sign where the Product is offered for sale, the
20 warning placard or sign must enable an ordinary individual to easily determine which Products the
21 warning applies to, and to differentiate between the Products and other products to which the
22 warning statement does not apply. In the event Defendant sells the Covered Products via the
23 internet or catalog after the Effective Date, Defendant shall include a clear and reasonable warning
24 consistent with 27 CCR §25602 (b).

25 3.2 Covered Products sold, shipped, or distributed for sale by Defendant in California
26 prior to the Effective Date may be sold in California after the Effective Date without any
27 Proposition 65 warning.
28

1 3.3 In addition, Defendant shall follow the notification procedure set out in Title 27
2 California Code of Regulations section 25600.2 or a similar procedure where Defendant instructs its
3 distributor or retailer customers to provide warnings for the Covered Products consistent with
4 Section 3.1 above.

5 3.4 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any
6 obligation to comply with any other pertinent state or federal law or regulation.

7 **4. PAYMENTS**

8 4.1 Defendant agrees to pay a total settlement amount of \$28,500 as outlined herein:

9 4.1.1 Penalty: Defendant shall issue two separate checks for a total of \$1,500 as
10 penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of
11 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of
12 \$1,125 representing 75% of the total penalty; and (b) one check to Victoria Jamison in the amount
13 of \$375 representing 25% of the total penalty. The OEHHA check shall be mailed to OEHHA
14 directly and the check for Jamison shall be delivered to: The Law Offices of George Rikos, 555
15 West Beech Street, Suite 500, San Diego, California 92101. The Penalty checks shall be issued
16 within 10 days after the Court approves and enters this Proposed Consent Judgment.

17 4.1.2 Attorneys’ Fees and Costs: Defendant shall issue one check for \$27,000 to
18 the Law Offices of George Rikos, as Jamison’s attorneys, for its investigation fees and costs and
19 attorneys’ fees and costs. The check shall be delivered to: The Law Offices of George Rikos, 555
20 West Beech Street, Suite 500, San Diego, California 92101. The payment of \$27,000 shall be
21 issued within 10 days following the Court’s execution of this Proposed Consent Judgment.

22 **5. EXECUTION IN COUNTERPARTS AND FACSIMILE**

23 5.1 This Consent Judgment may be executed in counterparts, which taken together shall
24 be deemed to constitute the same document. A facsimile or portable document format (PDF)
25 signature shall be as valid as the original.

26 **6. ENTIRE AGREEMENT**

27 6.1 This Consent Judgment contains the sole and entire agreement and understanding of
28 the Parties with respect to the entire subject matter hereof, and all related prior discussions,

1 negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to
2 bind any of the Parties.

3 **7. MODIFICATION OF CONSENT JUDGMENT**

4 7.1 This Consent Judgment may be modified from time to time by express written
5 agreement of the Parties, with the approval of the Court and prior notice to the Attorney General's
6 Office, or by an order of this Court upon motion and prior notice to the Attorney General's Office
7 and in accordance with law.

8 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
9 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10 **8. APPLICATION OF CONSENT JUDGMENT**

11 8.1 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of,
12 Jamison and the Releasers identified in Section 2 above.

13 **9. ENFORCEMENT OF CONSENT JUDGMENT**

14 9.1 Any Party may file a motion with the Court consistent with the terms and conditions
15 set forth in paragraph 9.2 of this Consent Judgment, to enforce the terms and conditions contained
16 in this Consent Judgment. The prevailing Party shall be entitled to its reasonable attorneys' fees
17 and costs incurred in such enforcement.

18 9.2 Prior to bringing any motion, order to show cause, or other proceeding to enforce
19 any terms of this Agreement, Jamison shall provide a Notice of Violation ("NOV") to Defendant.
20 The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the
21 date of alleged violations(s), place of sale, date and proof of purchase (if relevant), and any test data
22 obtained by Jamison regarding each such Covered Product. Jamison shall take no further action
23 regarding any alleged violation nor seek any monetary recovery for herself, her agents or her
24 counsel if, within 30 days of receiving such NOV, Defendant demonstrates that no such violation of
25 this Agreement has occurred. Should Jamison, after receiving Defendant's response to the NOV,
26 contend that a violation of the Agreement has occurred, the Parties shall meet and confer
27 concerning resolution of such dispute for a period of at least 30 days, following which either Party
28 may seek relief under Section 9.1.

1 **10. NOTIFICATION REQUIREMENTS**

2 10.1 Any notice required or permitted hereunder shall be effective only if given in writing
3 and delivered in person, certified or registered mail return receipt requested, or traceable overnight
4 delivery service, to the following designees:

5 For Jamison:
6 Law Offices of George Rikos
7 555 West Beech Street, Suite 500
8 San Diego, California 92101

9 For Universal Direct Brands, LLC :
10 Sarah Shekhter, Esq.
11 Seltzer Caplan McMahon Vitek
12 750 B Street, Suite 2100
13 San Diego, California 92101

14 Any Party may change its designee(s) for purposes of notification by providing written notice of
15 such change pursuant to this section.

16 **11. SEVERABILITY**

17 11.1 If, subsequent to the execution of this Consent Judgment, any of the provisions of
18 this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
19 provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable
20 provision is not severable from the remainder of this Agreement.

21 **12. GOVERNING LAW**

22 12.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 or its
24 implementing regulations are repealed, preempted, found by a court of competent jurisdiction to be
25 otherwise unlawful or unconstitutional with respect to products similar to the Covered Products, or
26 are rendered inapplicable by reason of law generally, or if the lead agency for Proposition 65
27 (currently OEHHA) takes some other final regulatory action for products similar to the Covered
28 Products in a manner that impacts the no significant or alternative risk level for DEHP or otherwise
determines that warnings for DEHP are not required for such products as currently produced or as
they may be reformulated, then Defendant may provide written notice to Jamison and may
manufacture, sell, ship for sale, and/or distribute Covered Products for sale in California without a

1 warning if the Covered Products do not create an exposure to DEHP in excess of any changed or
2 modified safe harbor no significant risk level or alternative risk level or other requirement of the
3 lead agency for Proposition 65. If the applicable laws or regulations change such that Defendants
4 are no longer required to warn, the Defendants may move to modify this Agreement or the Parties
5 may stipulate to modify this Agreement reflecting such change. The parties shall provide 45 days
6 notice of any motion or stipulation to the Attorney General. Jamison reserves his right to oppose
7 any motion to modify this Agreement.

8 **13. COURT APPROVAL**

9 13.1 This Consent Judgment is not effective until it is approved and entered by the Court.
10 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
11 noticed motion is required for judicial approval of this Consent Judgment, which Jamison shall
12 prepare and file.

13 **14. RETENTION OF JURISDICTION**

14 14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
15 Judgment.

16 **15. REPORTING OF THE CONSENT JUDGMENT**

17 15.1 Jamison agrees to comply with the reporting requirements referenced in Health and
18 Safety Code section 25249.7(f).

1 **IT IS SO STIPULATED:**


2
3
4 Dated: 9/20/22

Victoria Jamison
By: 

Printed Name: Victoria L. Jamison

6 Title: _____

7
8 Dated: 9/19/22

Universal Direct Brands, LLC
By: 

Printed Name: Matthew Bender

11 Title: President & CEO

12 **IT IS SO ORDERED:**

13
14 Dated: _____

Judge of the Superior Court