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AUDREY DONALDSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

AUDREY DONALDSON,
Plaintiff,

v.

SAMSONICO USA LLC; and DOES 1-150,
inclusive,

Defendants.

Case No. _____

[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Audrey Donaldson (“Donaldson”) and defendant Samsonico USA LLC (“Samsonico”), with Donaldson, and Samsonico each referred to individually as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

Donaldson is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

1.3 Defendant

Samsonico employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Donaldson alleges that Samsonico manufactures, sells, and distributes for sale in California PVC bar mats containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP. Donaldson alleges that Samsonico failed to provide the health hazard warnings required by Proposition 65 for exposures DEHP.

1.5 Product Description

The products covered by this Consent Judgment are PVC bar mats containing DEHP that are manufactured, sold, or distributed for sale in California by Samsonico including, but not limited to, the “*Budweiser Bar Mat*”, UPC: 0 43345 18257 4 (hereinafter “Products”).

1.6 Notices of Violation

On February 19, 2020, Donaldson served Anheuser-Busch InBev Worldwide, Inc. and J.C. Penney Company, Inc., as well as the requisite public enforcement agencies with a 60-Day Notice of Violation (the “February 19, 2020 Notice”), alleging that they violated Proposition 65 when they failed to warn their customers and consumers in California of the health hazards associated with

exposures to DEHP from their Products. Donaldson's counsel was thereafter contacted by Samsonico and informed that Samsonico was the upstream manufacturer/supplier of the Products.

Thereafter, on June 23, 2020, Donaldson issued a Supplemental 60-Day Notice of Violation to include Samsonico as a notice recipient. The February 19, 2020 and June 23, 2020 notices shall collectively be referred to hereinafter as the "Notices". No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.7 Complaint

On September 24, 2020, Donaldson commenced the instant action, naming Samsonico as one of the defendants for the alleged violations of Proposition 65 related to the Products ("Complaint").

1.8 No Admission

Samsonico denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Samsonico of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Samsonico of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Samsonico. This Section shall not, however, diminish or otherwise affect Samsonico's obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Samsonico as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that the Court grants the motion for approval of this Consent Judgment contemplated by Section 5, including any unopposed Tentative Ruling approving this Consent Judgment.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Samsonico shall not sell or offer the Products for sale in the State of California unless they qualify as Reformulated Products. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Consent Judgment, Samsonico agrees to pay \$3,000 in civil penalties within three (3) business days of the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson and delivered to the address in Section 3.3 herein. Samsonico will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$2,250; and (2) “Audrey Donaldson” in the amount of \$750.

3.2 Attorneys' Fees and Costs

The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Samsonico expressed a desire to resolve Donaldson's fees and costs. The Parties reached an accord on the compensation due to Donaldson and her counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within three (3) business days of the Effective Date, Samsonico agrees to pay \$22,750, in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Samsonico's management, and negotiating a settlement in the public interest, but exclusive of fees and costs on appeal, if any.

3.3 Payment Address

All payments under this Consent Judgment shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Donaldson's Release of Proposition 65 Claims

Donaldson, acting on her own behalf and in the public interest, releases Samsonico and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom Samsonico directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers including, but not limited to J.C. Penney Company, Inc. (and its subsidiaries, successors and assigns together with each's respective officers, directors, agents and employees), franchisers, cooperative members, licensors and licensees including, but not limited to Buxton Acquisition Co., Inc. and Anheuser-Busch InBev Worldwide, Inc., ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP in the Products, manufactured,

imported, distributed or sold by Samsonico prior to the Effective Date, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Samsonico or Buxton Acquisition Co., Inc.

4.2 Donaldson's Individual Release of Claims

Donaldson, in her individual capacity only and *not* in her representative capacity, also provides a release to Samsonico, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Donaldson, of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed or sold by Samsonico before the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Samsonico. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Samsonico's Products.

4.3 Samsonico's Release of Donaldson

Samsonico, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waive any and all claims against Donaldson and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Donaldson and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties. Donaldson and Samsonico agree to support the entry

of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Donaldson shall draft and file and Samsonico shall support, appearing at the hearing if so requested. If any third-party objection to the motion is filed, Donaldson and Samsonico agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

6. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Samsonico may provide written notice to Donaldson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Samsonico:

Joe Calhoun
Calhoun Law Firm
P.O. Box 251504
Little Rock, Arkansas 72225

For Donaldson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

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

9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.

12. AUTHORIZATION

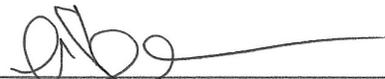
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Consent Judgment. Donaldson further warrants and represents that she has not assigned or otherwise transferred any or all of her assets, claims and/or other causes of action that relate to the Covered Products, including any portion of any claim released herein.

AGREED TO:

AGREED TO:

Date: October 17, 2020

Date: October __, 2020

By: 
AUDREY DONALDSON

By: _____
_____, President/CEO
SAMSONICO

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AGREED TO:

AGREED TO:

Date: October __, 2020

Date: October 14, 2020

By: _____
AUDREY DONALDSON

By: Steve Carpenter
STEVE Carpenter, President/CEO
SAMSONICO