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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SANTA CLARA  
11 UNLIMITED CIVIL JURISDICTION  
12

13 DENNIS JOHNSON,  
14 Plaintiff,  
15 v.  
16 MMS TRADING, INC.; THE TJX  
17 COMPANIES, INC.; and DOES 1-150,  
18 inclusive,  
19 Defendants.

Case No. 21CV \_\_\_\_\_  
[PROPOSED] CONSENT JUDGMENT  
(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Dennis Johnson (“Johnson”)  
4 and defendant MMS Trading, Inc. (“MMS Trading”), with Johnson and MMS Trading each  
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Johnson alleges that MMS Trading manufactures, imports, sells, and/or distributes for sale  
16 in California, PVC totes containing the phthalate chemical Di(2-ethylhexyl) Phthalate (“DEHP”).  
17 DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other  
18 reproductive harm. Johnson alleges that MMS Trading failed to provide the health hazard warning  
19 required by Proposition 65 for exposures to DEHP.

20 **1.5 Product Description**

21 The products covered by this Settlement Agreement are PVC totes including, but not limited  
22 to, the *Madison West “Bag-In-A-Bag” “The Perfect Clear Bag” PVC tote;* SKU: 19-2160-  
23 311654-002999-03-2 37257 87442 8, BGW—2492#- Rose Gold, manufactured, sold, or distributed  
24 for sale in California by MMS Trading (hereinafter referred to as “Products”)

25 **1.6 Notice of Violation**

26 On August 27, 2020, Johnson served MMS Trading, The TJX Companies, Inc. (“TJX”) and  
27 the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging  
28 that they violated Proposition 65 by failing to warn their customers and consumers in California of

1 the health hazards associated with exposures to DEHP from the Products. No public enforcer has  
2 commenced and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On February 11, 2021, Johnson commenced the instant action, naming MMS Trading as one  
5 of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that  
23 Plaintiff provides notice that the Court has approved this Consent Judgment, including any  
24 uncontested Tentative Ruling issued by the Court. Plaintiff may provide notice that the Court has  
25 approved this Consent Judgment via electronic mail to counsel for MMS Trading.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

2 **2.1 Reformulation/Warning Commitment**

3 As of the Effective Date, MMS Trading shall not manufacture, import, distribute, sell or  
4 offer the Products for sale in the State of California unless they are Reformulated Products pursuant  
5 to Section 2.2 or they contain a Proposition 65 warnings pursuant to Section 2.3 below. Products  
6 already distributed to Downstream Releasees prior to the Effective Date may continue to be sold  
7 through as is, as they have been included in the calculation of civil penalties required under Section  
8 3.1. Compliance with the terms of this Consent Judgment shall constitute compliance with  
9 Proposition 65 with respect to exposures to DEHP from the Products.

10 **2.2 Reformulation Standards**

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

15 **2.3 Product Warnings**

16 As of the Effective Date, all Products MMS Trading sells and/or distributes for sale in  
17 California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning  
18 pursuant to this Section. The warning shall be prominently placed with such conspicuousness when  
19 compared with other words, statements, designs or devices as to render it likely to be read and  
20 understood by an ordinary individual under customary conditions of use. For purposes of this  
21 Consent Judgment, a clear and reasonable warning for the Products shall consist of a warning  
22 affixed directly to the product or product packaging, label, or tag, for Products sold in California  
23 and contain one of the following statements:

24 **⚠ WARNING: Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)**

25 **OR**

1           ⚠ **WARNING:** This product can expose you to chemicals including DEHP, which  
2 is known to the State of California to cause birth defects or other reproductive harm.  
3 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

4 The equilateral triangle warning symbol shall be in yellow with a black exclamation mark; provided  
5 however, the warning symbol may be in black and white instead of yellow if the Product label does  
6 not contain the color yellow.

6 **3.     MONETARY SETTLEMENT TERMS**

7       **3.1     Civil Penalty Payment**

8           Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims  
9 alleged in the Notice or referred to in this Consent Judgment, MMS Trading agrees to pay \$3,500 in  
10 civil penalties within ten (10) business days of the Effective Date. The penalty payment will be  
11 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with  
12 75% of the penalty amount remitted to the California Office of Environmental Health Hazard  
13 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Johnson and  
14 delivered to the address in Section 3.3 herein. MMS Trading will provide its payment in two  
15 checks as follows: (1) “OEHHA” in the amount of \$2,625; and (2) “Dennis Johnson” in the amount  
16 of \$875.

17       **3.2     Attorneys’ Fees and Costs**

18           The Parties acknowledge that Johnson and his counsel offered to resolve this dispute  
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
20 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the  
21 other settlement terms had been reached, MMS Trading expressed a desire to resolve Johnson’s  
22 fees and costs. The Parties reached an accord on the compensation due to Johnson and his counsel  
23 under general contract principles and the private attorney general doctrine codified at Code of Civil  
24 Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within  
25 ten (10) business days of the Effective Date, MMS Trading agrees to pay \$24,500, in the form of a  
26 check made payable to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating,  
27 bringing this matter to the attention of MMS Trading’s management, and negotiating a settlement in  
28 the public interest, but exclusive of fees and costs on appeal, if any.

1           **3.3     Payment Address**

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

3                               Voorhees & Bailey, LLP  
4                               990 Amarillo Avenue  
5                               Palo Alto, CA 94303

6           **4.     CLAIMS COVERED AND RELEASED**

7           **4.1     Johnson’s Release of Proposition 65 Claims**

8           Johnson, acting on his own behalf and in the public interest, releases MMS Trading and its  
9           parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
10          and attorneys (“Releasees”) and each entity to whom MMS Trading directly or indirectly distributes  
11          or sells the Products including, but not limited to, its downstream distributors, wholesalers,  
12          customers, retailers including, but not limited to The TJX Companies, Inc., franchisers, cooperative  
13          members, licensors and licensees, (“Downstream Releasees”) from all claims for any violations  
14          arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured,  
15          imported, distributed or sold by MMS Trading prior to the Effective Date, as set forth in the Notice,  
16          regardless of the date any Releasee or Downstream Releasee distributes or sells the Product. The  
17          Parties further understand and agree that this Section 4.1 release shall not extend upstream to any  
18          entities that manufactured the Products or any component parts thereof, or any distributors or  
19          suppliers who sold the Products or any component parts thereof to MMS Trading.

20          **4.2     Johnson’s Individual Release of Claims**

21          Johnson, in his individual capacity only and *not* in his representative capacity, also provides  
22          a release to MMS Trading, Releasees, and Downstream Releasees which shall be effective as a full  
23          and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
24          expenses, attorneys’ fees, damages, fines, penalties, losses, claims, liabilities and demands of  
25          Johnson of any nature, character or kind, whether known or unknown, suspected or unsuspected,  
26          arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed  
27          or sold by MMS Trading before the Effective Date. The Parties further understand and agree that  
28          this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or

1 any component parts thereof, or any distributors or suppliers who sold the Products, or any  
2 component parts thereof to MMS Trading. Nothing in this Section affects Johnson's right to  
3 commence or prosecute an action under Proposition 65 against a Releasee that does not involve  
4 MMS Trading's Products. With respect to the foregoing waivers and releases in this Section 4.2,  
5 Johnson hereby specifically waives any and all rights and benefits which he now has, or in the  
6 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,  
7 which provides as follows:

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

#### 12 **4.3 MMS Trading's Release of Johnson**

13 MMS Trading, on its own behalf and on behalf of its past and current agents,  
14 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against  
15 Johnson and his attorneys and other representatives, for any and all actions taken or statements  
16 made by Johnson and his attorneys and other representatives, whether in the course of investigating  
17 claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### 18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved by the Court and shall be null  
20 and void if, for any reason, it is not approved and entered by the Court within one year after it has  
21 been fully executed by all Parties. Johnson agrees to obtain the Court's approval of their settlement  
22 in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code  
23 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,  
24 which motion Johnson shall draft and file

#### 25 **6. ENFORCEMENT OF JUDGMENT**

26 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The  
27 Parties may, by noticed motion or order to show cause before the Superior Court of California,  
28 County of Santa Clara, giving the required notice, enforce the terms and conditions contained in

1 this Consent Judgment. A Party may enforce any of the terms and conditions of this Consent  
2 Judgment only after that Party first provides 60 days' notice to the Party allegedly failing to comply  
3 with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure  
4 to comply.

5 **6.1 Future Notice of Violation.**

6 Prior to bringing any motion, order to show cause, or other proceeding to enforce the terms  
7 of this Consent Judgment, due to an alleged violation of the reformulation or warning standards  
8 contained in Sections 2.1 or 2.3 above, Johnson shall provide a Letter of Violation ("LOV") to  
9 MMS Trading. The LOV shall include the date(s) the alleged violation(s) was observed and the  
10 location at which the Product was offered for sale and shall be accompanied by all test data  
11 obtained by Johnson regarding the Products.

12 Johnson shall take no further action regarding the alleged violation if, within 30 days of  
13 receiving such NOV, MMS Trading serves a notice that meets one of the following conditions:

- 14 (a) The Products were shipped by MMS Trading for sale in California before the  
15 Effective Date, or  
16 (b) Since receiving the LOV, MMS Trading has taken corrective action by either  
17 (i) requesting that its customers or stores in California, as applicable, remove the Products identified  
18 in the LOV from sale in California and destroy or return the Products to MMS Trading , or (ii)  
19 providing a clear and reasonable warning for the Products identified in the LOV pursuant to Section  
20 2.3 above with written confirmation to Johnson.

21 If, subsequent to providing an initial LOV, Johnson alleges another violation of the terms of  
22 this Consent Judgment, he may bring any motion, order to show cause or other proceeding to  
23 enforce the terms of this Consent Judgment or otherwise proceed pursuant to Proposition 65, and  
24 shall have no obligation to comply with this Section.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California  
27 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
28 rendered inapplicable by reason of law generally, or as to the Products, then MMS Trading may



1 provide written notice to Johnson of any asserted change in the law and shall have no further  
2 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
3 Products are so affected.

4 **8. NOTICE**

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

9 For MMS Trading:

10 Sumir Kaytee  
11 MMS Trading  
12 5390 Rickenbacker Rd.  
13 Bell, CA 90201

For Johnson:

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

14 With copy to:

15 William Troutman  
16 Norton Rose Fulbright US LLP  
17 555 S Flower St., 41st Floor  
18 Los Angeles, CA 90071

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

21 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

26 Johnson and his attorneys agree to comply with the reporting form requirements referenced  
27 in California Health and Safety Code section 25249.7(f).

28 **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.

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**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.

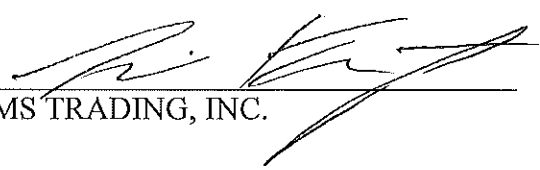
**AGREED TO:**

**AGREED TO:**

Date: July 13, 2021

Date: 06/21/21

By:   
DENNIS JOHNSON

By:   
MMS TRADING, INC.