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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 REIKO WIRELESS, INC., OVERSTOCK.COM,
15 INC.,

16 Defendants.

Case No.: CGC-21-596071

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: September 26, 2022

Hearing Time: 9:30 AM

Reservation #:

1 **1. INTRODUCTION**

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

9 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
10 individuals to Bisphenol A (BPA) from its sales of Reiko Protect Case without providing a clear
11 and reasonable exposure warning pursuant to Proposition 65. BPA is listed under Proposition 65
12 as a chemical known to the State of California to cause reproductive toxicity.

13 1.3 **Notice of Violation/Complaint.** On or about October 19, 2020, Ferreiro served
14 Reiko, Overstock.com, Inc., and various public enforcement agencies with documents entitled “60-
15 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging
16 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of the
17 Products expose users in California to BPA. No public enforcer has brought and is diligently
18 prosecuting the claims alleged in the Notice. On October 15, 2021, Ferreiro filed a complaint (the
19 “Complaint”) in the matter.

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
22 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
23 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
24 of all claims which were or could have been raised in the Complaint based on the facts alleged
25 therein and/or in the Notice.

26 1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and
27 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
28

1 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
2 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
3 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
4 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
5 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7 2.1 **Covered Products.** The term “Covered Products” means Reiko Protect Cases, that
8 are manufactured by or distributed by Reiko and sold and/or offered for sale in California by Reiko,
9 that expose users to BPA.

10 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
11 entered as a Judgment of the Court.

12 **3. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

13 3.1 **Reformulation of Products.** As of the date this Consent Judgment is signed by both
14 Parties, and continuing thereafter, Covered Products that Reiko directly manufactures, imports,
15 distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant
16 to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3
17 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated Product” is a Covered
18 Product that is in compliance with the standard set forth in § 3.2 below. The warning requirement
19 set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

20 3.2 **Reformulation Standard.** “Reformulated Products” shall mean any Products that
21 are demonstrated via an exposure assessment conducted in accordance with applicable Proposition
22 65 laws and regulations to result in a dermal exposure to BPA from solid reasonably accessible
23 materials that does not exceed the Maximum Allowable Dose Level for BPA of 3 micrograms per
24 day. Any such exposure assessment shall, as part of the assessment, incorporate the use of BPA
25 wipe testing of the Product to quantify BPA migration.

1 3.3 **Clear and Reasonable Warning.** As of the Effective Date, Reiko agrees to
2 manufacture, import, or purchase for sale in California only Products that are accompanied by either
3 of the following warnings:

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

5 ⚠ **WARNING:** This product can expose you to chemicals including Bisphenol A
6 (BPA), which is known to the State of California to cause birth defects or other
7 reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

10 ⚠ **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

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

24 If Reiko sells Covered Products via an internet website to customers located in California,
25 the warning requirements of this section shall be satisfied if the foregoing warning appears either:

26 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the
27 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a
28 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a

1 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or
2 immediately following the display, description, price, or checkout listing of the Covered Product,
3 if the warning statement appears elsewhere on the same web page in a manner that clearly associates
4 it with the product(s) to which the warning applies. Defendant shall instruct any third party internet
5 sellers, who they sold the Covered Product directly to, to provide the warning as a condition of sale
6 of the Covered Product.

7 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
8 compliance with this Consent Judgment by (1) adhering to §§ 3.3 and 3.4 of this Consent Judgment;
9 and (2) complying with warning requirements adopted by the State of California’s Office of
10 Environmental Health Hazard Assessment (“OEHHA”) applicable to the product and the exposure
11 at issue after the Effective Date.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** Reiko shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
14 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
15 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
16 Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

17 **4.1.1** Within ten (10) days of the Effective Date, Reiko shall issue two separate checks
18 for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b) “Brodsky &
19 Smith in Trust for Ferreiro” in the amount of \$250.00. Payment owed to Ferreiro pursuant to this
20 Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire
22 Brodsky & Smith
23 Two Bala Plaza, Suite 805
24 Bala Cynwyd, PA 19004

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

27 For United States Postal Service Delivery:

28 Mike Gyurics
29 Fiscal Operations Branch Chief
30 Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 1001 I Street
8 Sacramento, CA 95814

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

11 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Reiko shall pay
12 \$15,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Ferreiro's
13 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Reiko attention,
14 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
15 pursuant to Code of Civil Procedure § 1021.5.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
18 acting on his own behalf, and on behalf of the public interest, and Reiko, and its parents,
19 shareholders, members, directors, officers, managers, employees, representatives, agents,
20 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
21 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
22 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
23 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
24 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
25 violations of Proposition 65 based on exposure to BPA from use of Covered Products as set forth
26 in the Notice, with respect to any Covered Products manufactured, distributed, or sold by Reiko
27 prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall have
28 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
her, or its interests or the public interest shall be permitted to pursue and/or take any action with
respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have

1 been brought pursuant to the Notice against Reiko and/or the Downstream Releasees of the Covered
2 Products (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment
3 constitutes compliance with Proposition 65 with regard to BPA exposure from the Covered
4 Products as set forth in the Notice/Complaint. Third party internet sellers who do not provide a
5 warning in compliance with §§ 3.4, above are expressly not covered by this release.

6 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
7 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
8 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
9 legal action and releases Reiko, Defendant Releasees, and Downstream Releasees from any and all
10 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
11 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
12 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
13 future, with respect to any alleged violations of Proposition 65 related to or arising from exposure
14 to BPA from use of Covered Products manufactured, distributed, or sold by Reiko, Defendant
15 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this
16 paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or
17 in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,
18 which provides as follows:

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

25 5.3 Reiko waives any and all claims against Ferreiro, his attorneys and other
26 representatives, for any and all actions taken or statements made (or those that could have been
27 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
28 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
and/or with respect to exposure to BPA from use of Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
10 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
11 to the extent that, Covered Products are so affected.

12 **8. NOTICES**

13 8.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
16 by the other party at the following addresses:

17 For Defendant:

18 Bruce Fields
19 Law Offices of Fei Pang
20 411 E Huntington Drive., Suite 206
21 Arcadia, CA 91006

22 And

23 For Ferreiro:

24 Evan J. Smith, Esquire
25 Brodsky & Smith
26 Two Bala Plaza, Suite 805
27 Bala Cynwyd, PA 19004

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood and agree to all of the terms and conditions of this
7 document and certify that he or she is fully authorized by the Party he or she represents to execute
8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
9 explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO:

AGREED TO:

8/10/2022

Date:

Date:

1/17/2022

By:

Anthony Ferreiro
ANTHONY FERREIRO

By:

[Signature]
REIKO WIRELESS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

Judge of Superior Court