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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 WISDOM USA, INC. & BOSCOV'S, INC.,

15 Defendants.

Case No.: CGC-22-597539

**[PROPOSED] CONSENT  
JUDGMENT**

Judge: Richard B. Ulmer Jr.

Dept.: 302

Hearing Date: August 8, 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 Wisdom USA, Inc.  
4           (“Wisdom” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties”  
5           and each of them as a “Party.” Ferreiro is an individual residing in California who 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. Wisdom is alleged to be a person in the  
8           course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et  
9           seq.

10           1.2     **Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11           individuals to di(2-ethylhexyl) phthalate (“DEHP”) from its sales of Wisdom Backpacks without  
12           providing a clear and reasonable exposure warning pursuant to Proposition 65. Wisdom denies this  
13           allegation. DEHP is listed under Proposition 65 as a chemical known to the State of California to  
14           cause cancer and reproductive toxicity.

15           1.3     **Notice of Violation/Complaint.** On or about January 11, 2021, Ferreiro served  
16           Wisdom, Boscov’s, Inc., Boscov’s Department Store, LLC, and various public enforcement  
17           agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code  
18           §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn  
19           consumers and customers that use of Wisdom Backpacks expose users in California to DEHP. No  
20           public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On  
21           January 10, 2022, Ferreiro filed a complaint (the “Complaint”) in the matter.

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

1           1.5     Defendant denies the material allegations contained in Ferreiro’s Notice, Complaint  
2 and in this Consent Judgment, and maintains that it has not violated Proposition 65. Nothing in  
3 this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue  
4 of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be  
5 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation  
6 of law, such being specifically denied by Defendant. However, this section shall not diminish or  
7 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent  
8 Judgment.

9           **2.     DEFINITIONS**

10           2.1     **Covered Products.** The term “Covered Products” means Wisdom Backpacks that  
11 are manufactured, distributed and/or offered for sale in California by Wisdom.

12           2.2     **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
13 entered as a Judgment of the Court.

14           **3.     INJUNCTIVE RELIEF: WARNINGS**

15           3.1     **Reformulation of Covered Products.** As of the date this Consent Judgment is  
16 signed by both Parties, and continuing thereafter, Covered Products that Wisdom directly  
17 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
18 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
20 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §  
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
22 Product.

23           3.2     **Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP  
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose  
27 of determining the phthalate content in a solid substance.  
28

1           3.3     **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
3 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufactures,  
4 imports, distributes, sells, or offers for sale in California that are not Reformulated Products. There  
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream  
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall  
7 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

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

1 If Wisdom sells Covered Products via an internet website to customers located in California,  
2 the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
3 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the  
4 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
5 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
6 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
7 immediately following the display, description, price, or checkout listing of the Covered Product,  
8 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
9 it with the product(s) to which the warning applies.

10 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
11 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
12 Judgment or by complying with warning requirements adopted by the State of California’s Office  
13 of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

14 **3.6 Modifications to Warning Statements.** If modifications or amendments to  
15 Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning  
16 specifications different from, the specifications in this Consent Judgment, Wisdom may modify the  
17 content and delivery methods of its warnings to conform to the modified or amended provisions of  
18 Proposition 65 or its regulations.

19 **3.7 Products Already In Stream of Commerce.** There shall be no obligation for  
20 Wisdom to recall, reformulate or provide an exposure warning for Products that left Wisdom’s  
21 possession prior to date this Consent Judgment is signed by both Parties.

22 **4. MONETARY TERMS**

23 **4.1 Civil Penalty.** Wisdom shall pay \$1,000 as a Civil Penalty pursuant to Health and  
24 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
25 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
26 Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

1                   4.1.1 Within ten (10) business days of the Effective Date, Wisdom shall issue  
2 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750; and to  
3 (b) "Brodsky & Smith in Trust for Ferreiro" in the amount of \$250. Payment owed to Ferreiro  
4 pursuant to this Section shall be delivered to the following payment address:

5                   Evan J. Smith, Esquire  
6                   Brodsky & Smith  
7                   Two Bala Plaza, Suite 805  
8                   Bala Cynwyd, PA 19004

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

11                   For United States Postal Service Delivery:

12                   Mike Gyurics  
13                   Fiscal Operations Branch Chief  
14                   Office of Environmental Health Hazard Assessment  
15                   P.O. Box 4010  
16                   Sacramento, CA 95812-4010

17                   For Non-United States Postal Service Delivery:

18                   Mike Gyurics  
19                   Fiscal Operations Branch Chief  
20                   Office of Environmental Health Hazard Assessment  
21                   1001 I Street  
22                   Sacramento, CA 95814

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

25                   4.2     **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Wisdom shall  
26 pay \$16,000 to Brodsky & Smith as complete reimbursement for Ferreiro's attorneys' fees and  
27 costs incurred as a result of investigating, bringing this matter to Wisdom attention, litigating and  
28 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code  
of Civil Procedure § 1021.5.

29 **5.     RELEASE OF ALL CLAIMS**

30                   5.1     This Consent Judgment is a full, final, and binding resolution between Ferreiro  
31 acting on his own behalf, and on behalf of the public interest, and Wisdom, and its parents,

1 shareholders, members, directors, officers, managers, employees, representatives, agents,  
2 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
3 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they  
4 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
5 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
6 retailers, franchisees, and cooperative members (“Downstream Releasees”), including but not  
7 limited to Boscov’s, Inc. and Boscov’s Department Store, LLC, of all claims for violations of  
8 Proposition 65 based on exposure to DEHP from use of the Covered Products manufactured,  
9 distributed, or sold by Wisdom, Boscov’s, Inc. and/or Boscov’s Department Store, LLC as set forth  
10 in the Notice. It is the Parties’ intention that this Consent Judgment shall have preclusive effect  
11 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests  
12 or the public interest shall be permitted to pursue and/or take any action with respect to any violation  
13 of Proposition 65 based on exposure to DEHP from use of the Covered Products that was alleged  
14 in the Complaint, or that could have been brought pursuant to the Notice against Wisdom and/or  
15 the Downstream Releasees, including but not limited to Boscov’s, Inc. and Boscov’s Department  
16 Store, LLC. (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment  
17 constitutes compliance with Proposition 65 with regard to exposure to DEHP from use of the  
18 Covered Products.

19           5.2     In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
20 agents, representatives, attorneys, and successors and/or assignees, and not in his representative  
21 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
22 legal action and releases Wisdom, Defendant Releasees, and Downstream Releasees, including but  
23 not limited to Boscov’s, Inc. and Boscov’s Department Store, LLC from any and all manner of  
24 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,  
25 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of any nature  
26 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with  
27 respect to any alleged violations of Proposition 65 related to or arising from Covered Products  
28

1 manufactured, distributed, or sold by Wisdom, Defendant Releasees or Downstream Releasees,  
2 including but not limited to Boscov's, Inc. and Boscov's Department Store, LLC. Ferreiro and his  
3 attorneys are not currently aware of any Proposition 65 violations by Wisdom, Boscov's, Inc., or  
4 Boscov's Department Store, LLC with respect to any product other than the violations alleged  
5 herein. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby  
6 specifically waives any and all rights and benefits which he now has, or in the future may have,  
7 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
8 follows:

9  
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.

16  
17 5.3 Wisdom waives any and all claims against Ferreiro, his attorneys and other  
18 representatives, for any and all actions taken or statements made (or those that could have been  
19 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
20 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
21 and/or with respect to Covered Products.

## 18 **6. INTEGRATION**

19  
20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
21 any and all prior negotiations and understandings related hereto shall be deemed to have been  
22 merged within it. No representations or terms of agreement other than those contained herein exist  
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

## 23 **7. GOVERNING LAW**

24  
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. In the event that Proposition 65 is repealed or  
27 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
28

1 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
2 to the extent 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 Christopher Van Gundy  
10 SHEPPARD MULLIN  
11 Four Embarcadero Center, 17th Floor  
San Francisco, CA 94111

12 For Ferreiro:

13 Evan Smith  
14 Brodsky & Smith  
15 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

19 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
20 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
21 the same document.

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

24 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
25 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
26 Defendant agrees it shall support approval of such Motion.

27 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
28 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the

1 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
2 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. RETENTION OF JURISDICTION**

11 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
12 Consent Judgment.

13 **13. AUTHORIZATION**

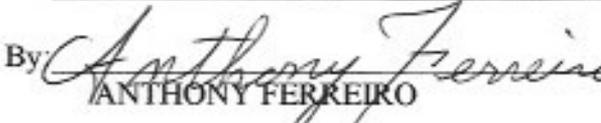
14 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
15 respective Parties and have read, understood and agree to all of the terms and conditions of this  
16 document and certify that he or she is fully authorized by the Party he or she represents to execute  
17 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
18 explicitly provided herein each Party is to bear its own fees and costs.

19 **AGREED TO:**

**AGREED TO:**

20 Date: 6/20/22

21 Date: 4/8/22

22 By:   
23 ANTHONY FERREIRO

24 By:   
25 WISDOM USA, INC.

26 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

27 Dated: \_\_\_\_\_

28 \_\_\_\_\_  
Judge of Superior Court