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

11 PRECILA BALABBO,  
12 Plaintiff,

13 v.

14 THE NORTHWEST GROUP LLC,  
15 Defendant.

Case No.: CGC-22-599360

**CONSENT JUDGMENT**

Judge: Richard B. Ulmer  
Dept.: 302

Hearing Date: June 6, 2023

Hearing Time: 9:30 AM

Complaint Filed: April 27, 2021

1           **1. INTRODUCTION**

2           1.1     **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo  
3 acting on behalf of the public interest (hereinafter “Balabbo”) and The Northwest Group LLC  
4 (“Northwest” or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties”  
5 and each of them as a “Party.” Balabbo 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. Northwest 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.** Balabbo alleges that Defendant has exposed  
11 individuals to di-isodecyl phthalate (DIDP) from its sales of are fanny packs without providing a  
12 clear and reasonable exposure warning pursuant to Proposition 65. DIDP is listed under Proposition  
13 65 as a chemical known to the State of California to reproductive toxicity.

14           1.3     **Notice of Violation/Complaint.** On or about April 27, 2021, Balabbo served  
15 Northwest, Kohl’s Inc., and various public enforcement agencies with documents entitled “60-Day  
16 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that  
17 Defendant violated Proposition 65 for failing to warn consumers and customers that use of fanny  
18 packs expose users in California to DIDP. No public enforcer has brought and is diligently  
19 prosecuting the claims alleged in the Notice. On April 26, 2022, Balabbo filed a complaint (the  
20 “Complaint”) in the matter.

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

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

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

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

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

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

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

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

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

1 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's  
2 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where  
3 Northwest offers Covered Products for sale to consumers in California. The requirements of this  
4 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink  
5 using the word "**WARNING**," appears on the product display page, or by otherwise prominently  
6 displaying the warning to the purchaser prior to completing the purchase. To comply with this  
7 Section, Northwest shall (a) post the **Warning** or **Alternative Warning** on its own website and, if  
8 it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not  
9 have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party  
10 internet sellers, provide such sellers with written notice in accordance with Title 27, California  
11 Code of Regulations, Section 25600.2. Third-party internet sellers of the Covered Product that have  
12 been provided with written notice in accordance with Title 27, California Code of Regulations,  
13 Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning  
14 requirements of this Section for Products that entered the stream of commerce after to the Effective  
15 Date.

16 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
17 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
18 Judgment or by complying with warning requirements adopted by the State of California's Office  
19 of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Product and  
20 the exposure at issue after the Effective Date.

21 **4. MONETARY TERMS**

22 4.1 **Civil Penalty.** Northwest shall pay \$2,000.00 as a Civil Penalty pursuant to Health  
23 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
24 Safety Code § § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the  
25 remaining 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety  
26 Code § 25249.12(d).

1                   4.1.1 Within ten (10) days of the Effective Date, Northwest shall issue two  
2 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and  
3 to (b) "Precila Balabbo" in the amount of \$500.00. Payment owed to Balabbo pursuant to this  
4 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) days of the Effective Date, Northwest shall pay  
26 \$23,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Balabbo's  
27 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Northwest  
28 attention, litigating and 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 Balabbo  
31 acting on her own behalf, and on behalf of the public interest, and Northwest, 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”), of all claims for  
7 violations of Proposition 65 based on exposure to DIDP from Covered Products as set forth in the  
8 Notice, with respect to any Covered Products manufactured, distributed, or sold by Northwest prior  
9 to the Effective Date. It is the Parties’ intention that this Consent Judgment shall have preclusive  
10 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its  
11 interests or the public interest shall be permitted to pursue and/or take any action with respect to  
12 any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought  
13 pursuant to the Notice against Northwest and/or the Downstream Releasees of the Covered  
14 Products (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment  
15 constitutes compliance with Proposition 65 with regard to exposure to DIDP from use of the  
16 Covered Products.

17           5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current  
18 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative  
19 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
20 legal action and releases Northwest, Defendant Releasees, and Downstream Releasees from any  
21 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
22 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
23 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
24 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
25 from Covered Products manufactured, distributed, or sold by Northwest, Defendant Releasees or  
26 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
27 Balabbo hereby specifically waives any and all rights and benefits which he now has, or in the  
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1 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
2 provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
4 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
6 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
7 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
8 DEBTOR OR RELEASED PARTY.

9 5.3 Northwest waives any and all claims against Balabbo, her attorneys and other  
10 representatives, for any and all actions taken or statements made (or those that could have been  
11 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of  
12 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
13 and/or with respect to Covered Products.

14 **6. INTEGRATION**

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
16 any and all prior negotiations and understandings related hereto shall be deemed to have been  
17 merged within it. No representations or terms of agreement other than those contained herein exist  
18 or have been made by any Party with respect to the other Party or the subject matter hereof.

19 **7. GOVERNING LAW**

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
21 California and apply within the State of California. In the event that Proposition 65 is repealed or  
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
23 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
24 to the extent that, Covered Products are so affected.

25 **8. NOTICES**

26 8.1 Unless specified herein, all correspondence and notices required to be provided  
27 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
28 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
by the other party at the following addresses:

For Defendant:



1 Michael B. Fisher  
2 Buchalter  
3 1000 Wilshire Boulevard, Suite 1500  
4 Los Angeles, California 90017-1730  
5 mbfisher@buchalter.com

6 And

7 For Balabbo:

8 Evan Smith  
9 Brodsky & Smith  
10 9595 Wilshire Blvd., Ste. 900  
11 Beverly Hills, CA 90212

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
17 the same document.

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

20 10.1 Balabbo agrees to comply with the requirements set forth in California Health &  
21 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
22 Defendant agrees it shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
25 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
26 days, the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
28 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
its normal course on the trial court's calendar.

1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **12. ATTORNEY'S FEES**

5 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

7 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
8 pursuant to law.

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
11 Consent Judgment.

12 **14. AUTHORIZATION**

13 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
14 respective Parties and have read, understood and agree to all of the terms and conditions of this  
15 document and certify that he or she is fully authorized by the Party he or she represents to execute  
16 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
17 explicitly provided herein each Party is to bear its own fees and costs.

18 **AGREED TO:**

**AGREED TO:**

19 Date: 4/18/23

Date: 2/1/2023

20 By:   
21 PRECILA BALABBO

22 By:   
23 THE NORTHWEST GROUP LLC

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

25 Dated: \_\_\_\_\_

26 \_\_\_\_\_  
27 Judge of Superior Court