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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 UNIFIRST-FIRST AID CORPORATION
15 dba GREEN GUARD, UNIFIRST
16 CORPORATION, HDS IP HOLDING,
17 LLC, HD SUPPLY, INC., HD SUPPLY
18 HOLDINGS, INC.,

19 Defendants.

Case No.: CGC-22-598906

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: November 29, 2023

Hearing Time: 9:30 AM

Complaint Filed: March 28, 2022

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 Unifirst-First Aid
4 Corporation dba Green Guard Corporation, (“Unifirst” or “Defendant”) with Ferreiro and
5 Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an
6 individual residing in California that seeks to promote awareness of exposures to toxic chemicals
7 and improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. Unifirst is alleged to be a person in the course of doing business for purposes of
9 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to diisononyl phthalate (DINP) from its sales of *Medi-First*® first aid kits, UPC #
12 347682437565, without providing a clear and reasonable exposure warning pursuant to Proposition
13 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause
14 cancer.

15 1.3 **Notice of Violation/Action.** On or about April 28, 2021, Ferreiro served HD
16 Supply, Inc., HD Supply Holdings, Inc., HDS IP Holding, LLC (collectively, “HDS”), Unifirst,
17 Unifirst Corporation, and various public enforcement agencies with documents entitled “60-Day
18 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
19 Defendant violated Proposition 65 for failing to warn consumers and customers that use of *Medi-*
20 *First*® first aid kits, UPC # 347682437565, expose users in California to DINP. No public enforcer
21 has brought and is diligently prosecuting the claims alleged in the Notice. On March 28, 2022,
22 Ferreiro filed a complaint (the “Complaint”).

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

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means *Medi-First*® first aid kits,
11 UPC # 347682437565 that are manufactured, distributed, shipped into California and offered for
12 sale in California by Unifirst.

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

15 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

16 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
17 signed by both Parties, and continuing thereafter, Covered Products that Unifirst directly
18 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
19 reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
20 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated
21 Product” is a Covered Product that is in compliance with the standard set forth in § 3.2 below. The
22 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated 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 DINP
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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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 manufacturers,
4 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. 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 diisononyl
10 phthalate (DINP), which is known to the State of California to cause cancer. For
11 more information go to www.P65Warnings.ca.gov.

12 (b) **Alternative Warning:** Unifirst 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 - 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** or **Alternative Warning** shall be affixed
21 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
26 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
27 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 Unifirst offers Products for sale to consumers in California. The requirements of this Section shall
4 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
5 "**WARNING**," appears on the product display page, or by otherwise prominently displaying the
6 warning to the purchaser prior to completing the purchase. In addition to and notwithstanding the
7 foregoing, Unifirst shall comply with Cal. Code Regs., tit. 27, § 25600.2.

8 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
9 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
10 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
11 Covered Product and exposures at issue after the Effective Date. If consumer information is
12 provided in a foreign language, Unifirst shall provide the **Warning** in the foreign language.

13 **4. MONETARY TERMS**

14 4.1 **Civil Penalty.** Unifirst shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
15 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
16 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
17 Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

18 4.1.1 Within ten (10) business days of the Effective Date, Unifirst shall issue two
19 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
20 to (b) "Anthony Ferreiro" in the amount of \$500.00. Payment owed to Ferreiro pursuant to this
21 Section shall be delivered to the following payment address:

22 Evan J. Smith, Esquire
23 Brodsky Smith
24 Two Bala Plaza, Suite 805
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

1 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
2 P.O. Box 4010
Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

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

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

9 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Unifirst shall pay
10 \$21,000.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Ferreiro's
11 attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention
12 of Unifirst, litigating and negotiating and obtaining judicial approval of a settlement in the public
13 interest, pursuant to Code of Civil Procedure § 1021.5.

14 **5. RELEASE OF ALL CLAIMS**

15 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
16 acting on his own behalf, and on behalf of the public interest, and Unifirst, and its parents,
17 shareholders, members, directors, officers, managers, employees, representatives, agents,
18 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
19 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
20 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
21 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
22 retailers, including but not limited to, its parents, subsidiaries, and affiliates, franchisees, and
23 cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
24 based on exposure to DINP from use of the Covered Products manufactured, distributed, or sold
25 by Unifirst prior to the Effective Date as set forth in the Notice. It is the Parties' intention that this
26 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
27 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
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1 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
2 DINP from use of the Covered Products that was alleged in the Complaint, or that could have been
3 brought pursuant to the Notice against Unifirst and the Downstream Releasees (“Proposition 65
4 Claims”). Unifirst’s compliance with the terms of this Consent Judgment constitutes compliance
5 with Proposition 65 by Unifirst with regard to exposure to DINP from use of the Covered Products.

6 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
7 agents, representatives, attorneys, and successors and 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 Unifirst, Defendant Releasees, and Downstream Releasees from any and
10 all 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 Covered
14 Products manufactured, distributed, or sold by Unifirst, Defendant Releasees or Downstream
15 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
16 specifically waives any and all rights and benefits which he now has, or in the future may have,
17 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
18 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
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

23 5.3 Unifirst waives any and all claims against Ferreiro, his attorneys and other
24 representatives, for any and all actions taken, or statements made (or those that could have been
25 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
26 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
27 and with respect to 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 Michael Patrick
19 Unifirst Corporation
20 68 Jonspin Road
20 Wilmington, MA 01887

21 For Ferreiro:

22 Evan Smith
23 Brodsky Smith
23 9595 Wilshire Blvd., Ste. 900
24 Beverly Hills, CA 90212

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

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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 10.4 The Parties agree that compliance by Defendant with this Consent Judgment
19 constitutes compliance with Proposition 65 with respect to exposure to DINP from use of the
20 Covered Product.

21 **11. MODIFICATION**

22 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
23 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

24 **12. ATTORNEY'S FEES**

25 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
26 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties and have read, understood, and agree to all of the terms and conditions of this
9 document and certify that he or she is fully authorized by the Party he or she represents to execute
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
11 explicitly provided herein each Party is to bear its own fees and costs.
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13

14 **AGREED TO:**

AGREED TO:

15 Date:

10/11/2020

16 Date:

08/09/23

17 By:

Anthony Ferreiro
ANTHONY FERREIRO

18 By:

T. Lema - VP LEGAL
UNIFIRST CORPORATION

19
20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23
24
25 Dated: _____

26 _____
27 Judge of Superior Court
28