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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 TZUMI INNOVATIONS, LLC, &
15 BURLINGTON STORES, INC.,

16 Defendants.

Case No.: CGC-22-599527

CONSENT JUDGMENT

Judge: Ethan P. Schulman
Dept.: 304
Hearing Date: 12/15/22
Hearing Time: 10:00 AM

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1. INTRODUCTION

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

1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Goodyear Pet Carriers without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about May 6, 2021, Balabbo served Tzumi, The Goodyear Tire & Rubber Company (“Goodyear”), Burlington Stores, Inc., Burlington Coat Factory Holdings, LLC (“Burlington”), and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of Goodyear Pet Carriers expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May 6, 2022, Balabbo filed a complaint (the “Complaint”) in the matter.

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

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Goodyear Pet Carriers that
10 are manufactured, distributed, sold, and/or offered for sale in the State of California by Tzumi.

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

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


14 3.1 **Reformulation of Covered Products.** Commencing sixty (60) days after the
15 Effective Date, and continuing thereafter, Covered Products that Tzumi directly manufactures,
16 imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products
17 pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant
18 to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, “Reformulated Products” are
19 Covered Products that are in compliance with the standard set forth in § 3.2 below. The warning
20 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Products.

21 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
22 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
23 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
24 and/or 8270C, or other methodology utilized by federal or state government agencies for the
25 purpose of determining the phthalate content in a solid substance.

26 3.3 **Clear and Reasonable Warning.** Commencing sixty (60) days after the Effective
27 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3
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1 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports,
2 distributes, sells, or offers for sale in California that are not Reformulated Products. There shall be
3 no obligation for Defendant to provide a warning for Covered Products that enter the stream of
4 commerce up to and including sixty (60) days after the Effective Date. The warning shall consist
5 of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

12  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

13 (c) Tzumi may use any form of “safe harbor” warning set forth in Proposition 65
14 Regulations that are adopted at the time it places Covered Products in the stream of commerce.

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.
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1 In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or
2 labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Tzumi offers
3 Products for sale to consumers in California. The requirements of this Section shall be satisfied if
4 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.

7 To comply with this Section, Tzumi shall post the **Warning** or **Alternative Warning** on
8 its own website and, if it has the ability to do so, on the websites of its Third-Party Internet Sellers.
9 If Tzumi does not have the ability to post the **Warning** or **Alternative Warning** on the websites
10 of its Third-Party Internet Sellers, Tzumi may provide such sellers with written notice in accordance
11 with Title 27, California Code of Regulations, Section 25600.2. For purposes of this Consent
12 Judgment, the term “Third-Party Internet Sellers” is defined as a party to whom Tzumi directly
13 sells Covered Products with actual knowledge that the party intends to distribute, sell or offer for
14 sale said Covered Products via the internet into the State of California. Third-Party Internet Sellers
15 of the Product that have been provided with written notice in accordance with Title 27, California
16 Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail
17 to meet the warning requirements herein. In entering this Consent Judgment, Tzumi does not waive
18 its First Amendment rights to freedom of expression, nor does Tzumi agree to extend the warning
19 obligations established in this Consent Judgment to Covered Products that are distributed, sold or
20 offered for sale outside of the State of California.

21 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
22 compliance with the warning requirements of this Consent Judgment by either adhering to §§ 3.3
23 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the State
24 of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”) applicable to the
25 Covered Products and the exposure at issue as of or after the Effective Date.

1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Tzumi shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
3 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining
5 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code
6 § 25249.12(d).

7 4.1.1 Within twenty (20) days of the Effective Date, Tzumi shall issue two
8 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
9 to (b) “Brodsky & Smith in Trust for Balabbo” in the amount of \$500.00. Payment owed to
10 Balabbo pursuant to this Section shall be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky & Smith
13 Two Bala Plaza, Suite 805
14 Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street
28 Sacramento, CA 95814

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

 4.2 **Attorneys’ Fees.** Within twenty (20) days of the Effective Date, Tzumi shall pay
\$18,000.00 to Brodsky & Smith (“Brodsky & Smith”) as complete reimbursement for Balabbo’s

1 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Tzumi's
2 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
3 interest, pursuant to Code of Civil Procedure § 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
6 acting on her own behalf, and on behalf of the public interest, and Tzumi, and its parents,
7 shareholders, members, directors, officers, managers, employees, representatives, agents,
8 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
9 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
10 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
11 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
12 retailers, franchisees, marketplace hosts, and cooperative members, including but not limited to The
13 Goodyear Tire & Rubber Company and Burlington Stores, Inc. and all of its subsidiary and affiliate
14 companies, including but not limited to Burlington Coat Factory Holdings, LLC ("Downstream
15 Releasees"), of all claims for violations of Proposition 65 based on exposure to DEHP from use of
16 the Covered Products as set forth in the Notice and Complaint, with respect to any Covered Products
17 manufactured, distributed, sold or offered for sale by Tzumi up to and including sixty (60) days
18 after the Effective Date. It is the Parties' intention that this Consent Judgment shall have preclusive
19 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its
20 interests or the public interest shall be permitted to pursue and/or take any action with respect to
21 any violation of Proposition 65 based on exposure to DEHP that was alleged in the Notice and
22 Complaint, or that could have been brought pursuant to the Notice against Tzumi, Defendant
23 Releasees, and/or Downstream Releasees of the Covered Products including but not limited to
24 alleged violations of this Consent Judgment ("Proposition 65 Claims"). Compliance with the terms
25 of this Consent Judgment constitutes compliance with Proposition 65 with regard to exposure to
26 DEHP from use of the Covered Products that could have been alleged in the Notice/Complaint.

1 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
2 agents, representatives, attorneys, and successors and/or assignees, and not in her representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Tzumi, Defendant Releasees, and Downstream Releasees from any and
5 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
8 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
9 Products manufactured, distributed, or sold by Tzumi, Defendant Releasees and/or Downstream
10 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
11 specifically waives any and all rights and benefits which she now has, or in the future may have,
12 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
13 follows:

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

20 5.3 Tzumi waives any and all claims against Balabbo, her attorneys and other
21 representatives, for any and all actions taken, or statements made (or those that could have been
22 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
23 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
24 and/or with respect to Covered Products.

25 **6. INTEGRATION**

26 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
27 prior negotiations and understandings related hereto shall be deemed to have been merged within
28 it. No representations or terms of agreement other than those contained herein exist or have been
made by any Party with respect to the other Party or the subject matter hereof.

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7. GOVERNING LAW

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

8. NOTICES

8.1 Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-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:

Carol Brophy
Steptoe & Johnson LLP
One Market Plaza, Spear Tower, Suite 3900
San Francisco, CA 94105

And

For Balabbo:

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

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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

2 **APPROVAL**

3 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall reasonably support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood and agree to all of the terms and conditions of this
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document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 10/10/22

Date: 10/7/22

By: 
PRECILA BALABBO

By: 
TZUMI INNOVATIONS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court