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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 SAMSONICO USA, LLC,

15 Defendant.

Case No.: CGC-22-602151

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: January 22, 2023

Hearing Time: 9:30 AM

Complaint Filed: 10/4/22

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 Samsonico USA, LLC
4 (“Samsonico” 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. Samsonico 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(2-ethylhexyl) phthalate (DEHP) from its sales of are Berkshire Auto Cleaning
12 Kits, UPC# 638688007099 and Berkshire Deluxe Auto Emergency Kit, UPC# 638688474693
13 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is
14 listed under Proposition 65 as a chemical known to the State of California to cause cancer and
15 reproductive toxicity.

16 1.3 **Notice of Violation/Complaint.** On or about January 11, 2022, Balabbo served
17 Samsonico, as well as Dillard’s, Inc.; Dillard International, LLC; Dillard International, Inc.
18 (collectively, “Dillard’s”), and various public enforcement agencies, with documents entitled “60-
19 Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging
20 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
21 Berkshire Auto Cleaning Kits, (UPC# 638688007099) and Berkshire Deluxe Auto Emergency Kit,
22 (UPC# 638688474693) expose users in California to DEHP. No public enforcer has brought and is
23 diligently prosecuting the claims alleged in the Notice. On October 4, 2022, Balabbo filed a
24 complaint (the “Complaint”) in the matter.

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

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

11 **2. DEFINITIONS**

12 2.1 **Covered Products.** The term "Covered Products" means the Berkshire Auto
13 Cleaning Kit (UPC# 638688007099) and Berkshire Deluxe Auto Emergency Kit (UPC#
14 638688474693) that are manufactured, distributed and/or offered for sale in California by
15 Samsonico.

16 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
17 entered as a Judgment of the Court.

18 **3. INJUNCTIVE RELIEF; WARNINGS**

19 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
20 signed by both Parties, and continuing thereafter, Covered Products that Samsonico directly
21 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
22 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
23 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
24 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
25 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
26 Product.

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

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

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

(b) **Alternative Warning:** Samsonico 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: Cancer and Reproductive Harm - 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

1 ordinary individual under customary conditions of purchase or use. A warning may be contained
2 in the same section of the packaging, labeling, or instruction booklet that states other safety
3 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
4 those other safety warnings.

5 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
6 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
7 Samsonico offers Covered Products for sale to consumers in California. The requirements of this
8 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink
9 using the word "**WARNING,**" appears on the Product display page, or by otherwise prominently
10 displaying the warning to the purchaser prior to completing the purchase. To comply with this
11 Section, Samsonico shall (a) post the **Warning** or **Alternative Warning** on its own website and,
12 if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not
13 have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party
14 internet sellers, provide such sellers with written notice in accordance with Title 27, California
15 Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been
16 provided with written notice in accordance with Title 27, California Code of Regulations, Section
17 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning
18 requirements of this Section.

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

24 **4. MONETARY TERMS**

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

3 4.1.1 Within ten (10) days of the Effective Date, Samsonico shall issue two
4 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
5 to (b) "Brodsky & Smith in Trust for Balabbo" in the amount of \$500.00. Payment owed to
6 Balabbo pursuant to this Section shall be delivered to the following payment address:

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

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

12 For United States Postal Service Delivery:

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

16 For Non-United States Postal Service Delivery:

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

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

22 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Samsonico shall pay
23 \$20,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Balabbo's
24 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Samsonico
25 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
26 interest, pursuant to Code of Civil Procedure § 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding release by Balabbo acting on her
3 own behalf, and on behalf of the public interest, of Samsonico and its parents, shareholders,
4 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
5 subdivisions, subsidiaries, partners, sister companies and affiliates, and their predecessors,
6 successors and assigns (“Defendant Releasees”), including (without limitation) Samsonico
7 International (Taiwan) Co. Ltd. and Grand Star Industrial Ltd., and all entities from whom they
8 obtain and to whom they directly or indirectly distribute or sell Covered Products, including
9 (without limitation) Dillard’s, including but not limited to manufacturers, suppliers, distributors,
10 wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members
11 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to
12 DEHP from use of the Covered Products as set forth in the Notice, with respect to any Covered
13 Products manufactured, distributed, or sold by Defendant Releasees prior to the Effective Date. It
14 is the Parties’ intention that this Consent Judgment shall have preclusive effect such that no other
15 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
16 interest shall be permitted to pursue and/or take any action with respect to any violation of
17 Proposition 65 based on exposure to DEHP that was alleged in the Complaint, or that could have
18 been brought pursuant to the Notice against Samsonico and/or the Downstream Releasees of the
19 Covered Products (“Proposition 65 Claims”).

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

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

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

17 **6. INTEGRATION**

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

22 **7. GOVERNING LAW**

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

28 **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-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
2 by the other party at the following addresses:

3 For Defendant:

4 Joe D. Calhoun
5 Calhoun Law Firm
6 P.O. Box 251504
7 Little Rock, Arkansas 72225-1504

7 And

8 For Balabbo:

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

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

24 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
25 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
26 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
27 days, the case shall proceed in accordance with the California Rules of Civil Procedure.

28 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent

1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed in
2 the regular course on the trial court's calendar.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

7 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

9 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
10 pursuant to law.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 **14. AUTHORIZATION**

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

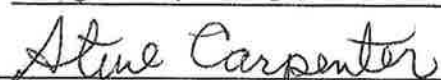
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21 **AGREED TO:**

AGREED TO:

22 Date: 10/14/2022

Date: 10-26-2022

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24 By: 
25 PRECILA BALABBO

By:  V.P.
26 SAMSONICO USA, LLC

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

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Judge of Superior Court