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8 PRECILA BALABBO

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 SERCO MOLD, INC., THE HOME DEPOT,
15 INC.,

16 Defendants.

Case No. CGC-22-600253

[PROPOSED] CONSENT JUDGMENT

Judge: Ethan P. Schulman

Dept.: 302

Hearing Date: December 22, 2022

Hearing Time: 9:30 AM

Action Filed: June 17, 2022

17
18 **1. INTRODUCTION**

19 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
20 acting on behalf of the public interest (hereinafter “Balabbo”) and Serco Mold, Inc. (“Serco” or
21 “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them
22 as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of
23 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
24 substances contained in consumer products. Serco is alleged to be a person in the course of doing
25 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

26 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
27 individuals to Bisphenol A (BPA) from its sales of Seahorse 56 Micro Cases without providing a
28 clear and reasonable exposure warning pursuant to Proposition 65. BPA is listed under Proposition

1 65 as a chemical known to the State of California to cause reproductive toxicity.

2 1.3 **Notice of Violation/Complaint.** On or about January 27, 2022, Balabbo served
3 Serco, The Home Depot, Inc., Home Depot Product Authority, LLC, and various public enforcement
4 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
5 §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn
6 consumers and customers that use of Seahorse 56 Micro Cases expose users in California to BPA.
7 No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
8 June 3, 2022, Balabbo filed a complaint (the “Complaint”) in the matter.

9 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
10 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
11 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve, enter,
12 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
13 claims which were or could have been raised in the Complaint based on the facts alleged therein
14 and/or in the Notice.

15 1.5 Defendant denies the material allegations contained in Balabbo’s Notice and
16 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
17 shall be construed as an admission by Defendant of any material allegation of the Complaint (each
18 and every allegation of which Defendant denies), any fact, conclusion of law, issue of law or
19 violation of law, including without limitation, any admission concerning any violation of Proposition
20 65 or any other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
21 “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and
22 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,
23 shall constitute or be construed as an admission by Defendant of any fact, conclusion of law, issue of
24 law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, its officers, directors,
25 employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in
26 any administrative or judicial proceeding or litigation in any court, agency, or forum. Nothing in
27 this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of
28 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed

1 as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
2 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
3 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

4 **2. DEFINITIONS**

5 2.1 **Covered Products.** The term “Covered Products” means Seahorse 56 Micro Cases
6 that are manufactured, distributed and/or offered for sale in California.

7 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
8 entered as a Judgment of the Court.

9 **3. INJUNCTIVE RELIEF: WARNINGS**

10 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
11 signed by both Parties, and continuing thereafter, Covered Products that Serco directly
12 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
13 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
14 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
15 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
16 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
17 Product.

18 3.2 **Reformulation Standard.** “Reformulated Products” shall mean any Covered
19 Products subject to this Settlement Agreement that achieve a wipe test result equal to, or less than, 3
20 micrograms of BPA.

21 3.2.1 **Wipe Test Protocol.** The “Wipe Test Protocol” for determining if a Covered
22 Product is a Reformulated Product is as follows:

23 3.2.1(a) Accessible sample surface of Covered Product is rubbed by
24 wipe sample swabs/paper soaked with acetonitrile or isopropyl alcohol sixty (60) times along
25 longitudinal, latitudinal and diagonal orientation.

26 3.2.1(b) Wipe sample swabs/paper is extracted with acetonitrile or
27 isopropyl alcohol, followed by analysis with High Performance Liquid Chromatography –
28 Mass Selective Detector (HPLC-MSD).

1 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed by
2 both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in this
3 §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports,
4 distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be
5 no obligation for Defendant to provide a warning for Covered Products that enter the stream of
6 commerce prior to the Effective Date. The warning shall consist of either the **Warning** or
7 **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 Bisphenol A
10 (BPA), which is known to the State of California to cause birth defects or other
11 reproductive harm. For more information go to www.P65Warnings.ca.gov.

12 (b) **Alternative Warning:** Serco 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:** Reproductive Harm - www.P65Warnings.ca.gov.

15 (c) Serco may use any form of “safe harbor” warning set forth in Proposition 65
16 regulations that are adopted at the time it places a Product in the stream of commerce.

17 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
18 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
19 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
20 triangle with a black outline, except that if the sign or label for the Covered Product does not use the
21 color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than
22 the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Covered
23 Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic
24 process, providing that the warning is displayed with such conspicuousness, as compared with other
25 words, statements, or designs as to render it likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use. A warning may be contained in the same
27 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
28

1 concerning the use of the Covered Product and shall be at least the same size as those other safety
2 warnings.

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

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

22 **4. MONETARY TERMS**

23 **4.1 Civil Penalty.** Serco shall pay \$4,000.00 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 § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining 25%
26 of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code
27 § 25249.12(d).

1 4.1.1 Within ten (10) days of the Effective Date, Serco shall issue two separate
2 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,000.00; and to (b)
3 "Brodsky & Smith in Trust for Balabbo" in the amount of \$1,000.00. Payment owed to Balabbo
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

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

10 For United States Postal Service Delivery:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010
15 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
20 1001 I Street
21 Sacramento, CA 95814

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

24 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Serco shall pay
25 \$38,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Balabbo's
26 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Serco attention,
27 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
28 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 acting
31 on her own behalf, and on behalf of the public interest, and Serco, and its parents, shareholders,
32 members, directors, officers, managers, employees, representatives, agents, insurers, attorneys,

1 divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
2 predecessors, successors and assigns (“Defendant Releasees”), Calsak Corporation and all entities
3 from whom they obtain, to whom they directly or indirectly distribute to, or sell Covered Products,
4 or the materials contained therein, including but not limited to, manufacturers, suppliers, distributors,
5 wholesalers, customers, licensors, licensees retailers (including but not limited to, The Home Depot,
6 Inc., its parents, subsidiaries, and affiliated entities), franchisees, and cooperative members
7 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to BPA
8 from use of the Covered Products as set forth in the Notice, with respect to any Covered Products
9 manufactured, distributed, or sold by Serco prior to the Effective Date. It is the Parties’ intention that
10 this Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
11 whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue
12 and/or take any action with respect to any violation of Proposition 65 based on exposure to BPA that
13 was alleged in the Complaint, or that could have been brought pursuant to the Notice against Serco,
14 Defendant Releasees, and/or the Downstream Releasees of the Covered Products (“Proposition 65
15 Claims”).

16 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
17 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative
18 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action and releases Serco, Defendant Releasees, and Downstream Releasees from any and all
20 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
21 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
22 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
23 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
24 Products manufactured, distributed, or sold by Serco, Defendant Releasees or Downstream
25 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
26 specifically waives any and all rights and benefits which she now has, or in the future may have,
27 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
28 follows:

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

8
9 Balabbo understands and acknowledges that the significance and consequence of this waiver
10 of California Civil Code section 1542 is that even if she suffers future damages arising out of or
11 resulting from, or related directly or indirectly to, in whole or in part, Proposition 65 Claims arising
12 from any violation of Proposition 65 or any other statutory or common law regarding the failure to
13 warn about exposure to BPA from the Covered Products, including but not limited to any exposure
14 to, or failure to warn with respect to exposure to BPA from the Covered Products, Balabbo will not
15 be able to make any claim for those damages against Defendant, Defendant Releasees, and
16 Downstream Releasees. Furthermore, Balabbo acknowledges that she intends these consequences for
17 any such Proposition 65 Claims arising from any violation of Proposition 65 or any other statutory or
18 common law regarding the failure to warn about exposure to BPA from Covered Products as may
19 exist as of the date of this release but which she does not know exist, and which, if known, would
20 materially affect her decision to enter into this Consent Judgment, regardless of whether her lack of
21 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

22
23 5.3 Serco waives any and all claims against Balabbo, her 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 Balabbo and her 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/or with respect to exposure to BPA from Covered Products.

28
6. INTEGRATION

6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
prior negotiations and understandings related hereto shall be deemed to have been merged within 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.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
5 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
6 Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
11 the other party at the following addresses:

12 For Defendant:

13 Jad T. Davis
14 Thomas V. Wynsma
15 Shook, Hardy & Bacon L.L.P.
16 5 park Plaza, Suite 1600
17 Irvine, CA 92614

For Balabbo:

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

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

25 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
26 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
27 Defendant agrees it shall support approval of such Motion.
28

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
3 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
4 days, the case shall proceed on its normal course. If the Consent Judgment is approved, Balabbo
5 shall file a dismissal of this entire action with prejudice within three (3) business days of when the
6 Court approves the Consent Judgment.

7 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
8 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
9 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
10 its normal course on the trial court's calendar.

11 **11. MODIFICATION**

12 11.1 This Consent Judgment may be modified only by further stipulation of the Parties and
13 the approval of the Court or upon the granting of a motion brought to the Court by either Party.

14 **12. ATTORNEY'S FEES**

15 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
16 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
19 Judgment.

20 **14. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: 07/29/2022

Date: 8/10/2022

By: 
PRECILA BALABBO

By: 
SERCO MOLD, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court