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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 PEARL WORLD, INC., FIVE BELOW, INC.,

15 Defendants.

Case No.: CGC-23-605402

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: September 4, 2024

Hearing Time: 9:30 AM

Complaint Filed: March 24, 2023

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 Pearl World, Inc. (“Pearl
4 World” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Ferreiro 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. Pearl World 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.** Ferreiro alleges that Defendant has exposed
11 individuals to diethanolamine (DEA) from its sales of Alchemy Living hand sanitizers, UPC #
12 810024699001, without providing a clear and reasonable exposure warning pursuant to Proposition
13 65. DEA is listed pursuant to 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 11, 2022, Ferreiro served Five
16 Below, Inc. (“Five Below”), Pearl World, and various public enforcement agencies with documents
17 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
18 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of Alchemy Living hand sanitizers, UPC # 810024699001, expose users in
20 California to DEA. No public enforcer has brought and is diligently prosecuting the claims alleged
21 in the Notice. On March 24, 2023, Ferreiro filed a complaint (the “Complaint”).

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

1 1.5 Defendant denies the material allegations contained in Ferreiro’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 Alchemy Living hand
10 sanitizers, UPC # 810024699001, that are manufactured, distributed, shipped into California and
11 offered for sale in California by Pearl World that expose users to DEA.

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: COMMITMENT NOT TO SELL**

15 3.1 **Commitment Not to Sell.** Commencing within sixty (60) days of the Effective
16 Date, and continuing thereafter, Defendant agrees that it shall not manufacture, distribute, sell, or
17 offer Covered Products for sale in California. Covered Products that have been manufactured,
18 packaged, or put into commerce within 60 days after the Effective Date, shall be subject to the
19 release of liability pursuant to this Consent Judgment without regarding to when such Covered
20 Products were distributed or sold to customers.

21 **4. MONETARY TERMS**

22 4.1 **Civil Penalty.** Pearl World shall pay \$1,000.00 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 § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
25 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

26 4.1.1 Within ten (10) days of the Effective Date, Pearl World shall issue two
27 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to
28

1 (b) "Anthony Ferreiro" in the amount of \$250.00. Payment owed to Ferreiro pursuant to this
2 Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky Smith
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

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

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

23 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Pearl World shall pay
24 \$16,500.00 to Brodsky Smith as complete reimbursement for Ferreiro's attorneys' fees and costs
25 incurred as a result of investigating, bringing this matter to the attention of Pearl World, litigating
26 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
27 Code of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
acting on his own behalf, and on behalf of the public interest, and Pearl World, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they

1 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
2 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
3 retailers, including but not limited to, Five Below, and its parents, subsidiaries, and affiliates,
4 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of
5 Proposition 65 based on exposure to DEA from use of the Covered Products manufactured,
6 distributed, or sold by Pearl World within 60 days after the Effective Date, as set forth in the Notice.
7 It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that no other
8 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
9 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
10 65 based on exposure to DEA from use of the Covered Products that was alleged in the Complaint,
11 or that could have been brought pursuant to the Notice against Pearl World and the Downstream
12 Releasees (“Proposition 65 Claims”). Pearl World’s compliance with the terms of this Consent
13 Judgment constitutes compliance with Proposition 65 by Pearl World with regard to exposure to
14 DEA from use of the Covered Products.

15 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
16 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action and releases Pearl World, Defendant Releasees, and Downstream Releasees from any
19 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
20 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
21 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
22 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
23 from Covered Products manufactured, distributed, or sold by Pearl World, Defendant Releasees or
24 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
25 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
26 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
27 provides as follows:
28

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

7 5.3 Pearl World waives any and all claims against Ferreiro, his attorneys and other
8 representatives, for any and all actions taken, or statements made (or those that could have been
9 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
11 and with respect to Covered Products.

12 **6. INTEGRATION**

13 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
14 any and all prior negotiations and understandings related hereto shall be deemed to have been
15 merged within it. No representations or terms of agreement other than those contained herein exist
16 or have been made by any Party with respect to the other Party or the subject matter hereof.

17 **7. GOVERNING LAW**

18 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California and apply within the State of California. In the event that Proposition 65 is repealed or
20 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
21 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
22 to the extent that, Covered Products are so affected.

23 **8. NOTICES**

24 8.1 Unless specified herein, all correspondence and notices required to be provided
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
26 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
27 by the other party at the following addresses:

28 For Defendant:

Kevin C. Kroll
Kibler Fowler & Cave LLP
11100 Santa Monica Blvd., Ste. 360
Los Angeles, CA 90025

1 And

2 For Ferreiro:

3 Evan Smith
4 Brodsky Smith
5 9465 Wilshire Blvd., Ste. 300
6 Beverly Hills, CA 90212

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and
12 the same document.

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

14 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
15 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
16 Defendant agrees it shall support approval of such Motion.

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
19 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
20 days, the case shall proceed on its normal course.

21 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
22 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
23 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
24 its normal course on the trial court's calendar.

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
28

1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

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

15 **AGREED TO:**

AGREED TO:

16
17 Date: 7/16/24

Date: Jul 2, 2024

18 By: Anthony Ferreiro

By: Deigha Claason

19 ANTHONY FERREIRO

PEARL WORLD, INC.

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

22
23 Dated: _____

24 Judge of Superior Court