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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 TARGET CORPORATION,
15 Defendant.

Case No.: CGC-23-608083

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: November 13, 2024
Hearing Time: 9:30 AM
Complaint Filed: August 2, 2023

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

9 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of *Lily Frilly*® mermaid sparkle
11 clips for toddlers, UPC # 850007602222 without providing a clear and reasonable exposure
12 warning pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
13 to the State of California to cause cancer and birth defects or other reproductive harm.

14 1.3 **Notice of Violation/Action.** On or about August 3, 2022, Balabbo served Target
15 Corporation and various public enforcement agencies with documents entitled “60-Day Notice of
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
17 violated Proposition 65 for failing to warn consumers and customers that use of *Lily Frilly*®
18 mermaid sparkle clips for toddlers, UPC # 850007602222 expose users in California to DEHP. No
19 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
20 August 2, 2023, Balabbo filed a complaint (the “Complaint”). On September 14, 2023, Balabbo
21 filed a first amended complaint (the “First Amended Complaint”).

22 The Complaint and the First Amended Complaint are collectively referred to herein as, the
23 “Action.”

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

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

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means *Lily Frilly®* mermaid
12 sparkle clips for toddlers, UPC # 850007602222 that are manufactured, distributed, shipped into
13 California and offered for sale in California by Target.

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

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Clear and Reasonable Warning.** Commencing with sixty (60) days after the
18 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
19 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,
20 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
21 to provide a warning for Covered Products that enter the stream of commerce prior to 60 days after
22 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
23 described in §§ 3.1(a) or (b), respectively:

24 (a) **Warning.** The "Warning" shall consist of the statement:

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

1 (b) **Alternative Warning:** Target may, but is not required to, use the alternative short-
2 form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

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

4 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
5 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
6 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
7 triangle with a black outline, except that if the sign or label for the Covered Product does not use
8 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
9 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
10 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
11 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
12 displayed with such conspicuousness, as compared with other words, statements, or designs as to
13 render it likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
15 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
16 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
17 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
18 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Target shall
19 provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
20 applicable warning regulations adopted by the State of California’s Office of Environmental Health
21 Hazard Assessment (“**OEHHA**”).

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

8 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
9 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
10 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
11 Product and exposures at issue.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** Target shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
14 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
15 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
16 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

17 **4.1.1** Within fourteen (14) days of the Effective Date, Target shall issue two
18 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to
19 (b) “Brodsky Smith in Trust for Balabbo” in the amount of \$250.00. Payment owed to Balabbo
20 pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire
22 Brodsky Smith
23 Two Bala Plaza, Suite 805
24 Bala Cynwyd, PA 19004

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

26 For United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 1001 I Street
8 Sacramento, CA 95814

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

11 4.2 **Attorneys' Fees.** Within fourteen (14) days of the Effective Date, Target shall pay
12 \$17,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs
13 incurred as a result of investigating, bringing this matter to the attention of Target, litigating and
14 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
15 of Civil Procedure § 1021.5.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
18 acting on her own behalf, and on behalf of the public interest, and Target, and its parents,
19 shareholders, members, directors, officers, managers, employees, representatives, agents,
20 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
21 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
22 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
23 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
24 retailers, including but not limited to Target, its parents, subsidiaries, and affiliates, franchisees,
25 and cooperative members ("Downstream Releasees"), of all claims for violations of Proposition 65
26 based on exposure to DEHP from use of the Covered Products manufactured, distributed, or sold
27 by Target within 60 days after the Effective Date as set forth in the Notice. It is the Parties' intention
28 that this Consent Judgment shall have preclusive effect such that no other actions by private
enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
permitted to pursue and take any action with respect to any violation of Proposition 65 based on

1 exposure to DEHP from use of the Covered Products that was alleged in the Action, or that could
2 have been brought pursuant to the Notice against Target and the Downstream Releasees
3 (“Proposition 65 Claims”). Target’s compliance with the terms of this Consent Judgment
4 constitutes compliance with Proposition 65 by Target with regard to exposure to DEHP from use
5 of the Covered Products.

6 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
7 agents, representatives, attorneys, and successors and assignees, and *not* in her representative
8 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
9 legal action and releases Target, 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 Target, Defendant Releasees or Downstream
15 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
16 specifically waives any and all rights and benefits which she 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
23 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
24 DEBTOR OR RELEASED PARTY.

25 5.3 Target waives any and all claims against Balabbo, her attorneys and other
26 representatives, for any and all actions taken, or statements made (or those that could have been
27 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
28 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
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. NOTICES**

7 7.1 Unless specified herein, all correspondence and notices required to be provided
8 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
9 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
10 by the other party at the following addresses:

11 For Defendant:

12 Lauren Shoor
13 Raymond Muro
14 Norton Rose Fulbright US LLP
15 555 S. Flower St., 41st Fl.,
16 Los Angeles, CA 90071

17 And

18 For Balabbo:

19 Evan Smith
20 Brodsky Smith
21 9465 Wilshire Blvd., Ste. 300
22 Beverly Hills, CA 90212

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

25 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

26 8.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and
28 the same document.

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

3 9.1 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 support approval of such Motion.

6 9.2 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 9.3 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 **10. MODIFICATION**

15 10.1 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 **11. ATTORNEY'S FEES**

18 11.1 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 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **12. RETENTION OF JURISDICTION**

23 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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13. AUTHORIZATION

13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this 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: 9 / 25 / 24

Date: 9/19/2024

By: *Precila Balabbo*
PRECILA BALABBO

By: *Jacob Vandelist*
TARGET CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court