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Attorneys for Plaintiff,
Consumer Protection Group, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER PROTECTION GROUP, LLC,
IN THE PUBLIC INTEREST,

PLAINTIFF,

V.

DIGGS INC., WALMART INC.,
and DOES 1-30

DEFENDANTS.

CASE NO. 23STCV06259

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 61

Judge: Hon. Gregory Keosian

Complaint filed: March 21, 2023

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Consumer Protection Group, LLC (“CPG”) acting on behalf of itself and in the interest of the public, and Defendant Diggs Inc (“Diggs” or “Defendant”), with each referred to as a “Party” and collectively referred to as “Parties.”

1.2 Defendant and Products

Defendant employs ten (10) or more persons. CPG alleges that Defendant manufactured, caused to be manufactured, sold, or distributed passenger travel carriers (“Carrier”) (referred to hereinafter as “Covered Products”). For purposes of this Consent Judgment only, Defendant is deemed a person in the course of doing business in California with more than ten (10) employees and subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California

1 Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”). The Covered Products are limited only
2 to those sold or supplied by Defendant.

3 **1.3 Listed Chemicals.**

4 Di (2-ethylhexyl) Phthalate (“DEHP”), has been listed by the State of California as a chemical
5 known to cause cancer and birth defects or other reproductive harm.

6 **1.4 Notice of Violation.**

7 On or about September 23, 2022, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer product exposures, subject to a private action to
9 Diggs, Walmart Inc. (“Walmart”), and to the California Attorney General, County District Attorneys,
10 and City Attorneys for each County containing a population of at least 750,000 people in whose
11 jurisdiction the violations allegedly occurred, concerning Carrier containing DEHP.

12 **1.5 Complaint.**

13 On March 21, 2023, CPG filed a Complaint for civil penalties and injunctive relief
14 (“Complaint”) in the above-captioned action. In the First Cause of Action, CPG alleges, among other
15 things, that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of
16 exposure to DEHP from the Carrier. Diggs denies all such allegations.

17 **1.6 Consent to Jurisdiction.**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over the allegations of violations contained in the Notice and Complaint and personal
20 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the County
21 of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full and final
22 settlement and resolution of the allegations contained in the Complaint and of all claims which were
23 or could have been raised by any person or entity based in whole or in part, directly or indirectly, on
24 the facts alleged therein or arising therefrom or related thereto.

25 **1.7 No Admission.**

26 This Consent Judgment resolves claims that are denied and disputed by Defendant. The
27 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
28 between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent

1 Judgment shall be construed as an admission by the Parties or Walmart of any material allegation of
2 the Notice or the Complaint, any fact, conclusion of law, issue of law or violation of law, including
3 without limitation, any admission concerning any alleged violation of Proposition 65 or any other
4 statutory, regulatory, common law, or equitable doctrine. Nothing in this Consent Judgment, nor
5 compliance with its terms, shall constitute or be construed as an admission by the Parties, or give rise
6 to any inference, of any fact, conclusion of law, issue of law, or violation of law, or of fault,
7 wrongdoing, or liability by Defendant, Walmart, any of their officers, directors, employees, or parent,
8 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or
9 judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent
10 Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may
11 have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

12 **1.8** The “Effective Date” shall mean the later of (a) the date the proposed consent
13 judgment is entered by the Court, (b) the date on which Diggs confirms receipt of wire instructions
14 for the lump sum payment referenced in Section 3.2, or (c) the date on which Diggs receives all
15 necessary W-9 forms from Blackstone Law and CPC.

16 **2. INJUNCTIVE RELIEF**

17 **2.1** As of the Effective Date, Defendant shall cease selling, offering for sale in California,
18 or distributing for sale in California the Covered Product, unless the Covered Product contain no more
19 than 1,000 parts per million or 0.1% DEHP by weight or contain a warning as described in
20 Section 2.3.

21 **2.2** Notwithstanding anything else in this Consent Judgment, Covered Products that are
22 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this
23 Consent Judgment, without regard to when such Covered Products were, or are in the future,
24 distributed or sold to customers. As a result, the obligation of Diggs, or any Releasees (if applicable)
25 set forth in Section 2 do not apply to these Covered Products manufactured on or prior to the Effective
26 Date.

1 in various products, and for expert fees for evaluating exposures through various mediums, including
2 but not limited to consumer product, occupational, and environmental exposures to Proposition 65
3 listed chemicals, and the cost of hiring consulting and retaining experts who assist with the scientific
4 analysis necessary for those files in litigation and to offset the costs of future litigation enforcing
5 Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative costs incurred
6 during investigation and litigation to reduce the public's exposure to Proposition 65 listed chemicals
7 by notifying those persons and/or entities believed to be responsible for such exposures and
8 attempting to persuade those persons and/or entities to reformulate their products or the source of
9 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals including but
10 not limited to costs of documentation and tracking of products investigated, storage of products,
11 website enhancement and maintenance, computer and software maintenance, investigative
12 equipment, CPG's member's time for work done on investigations, office supplies, mailing supplies
13 and postage.

14 **3.1.3 Reimbursement of Attorneys' Fees and Costs:** Defendant agrees to pay
15 eighty-six thousand two hundred and fifty dollars (\$86,250.00) to Blackstone Law, APC as complete
16 reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert fees,
17 report costs, and any and all other costs and expenses incurred as a result of investigating, bringing
18 this matter to the Defendant' attention, litigating, negotiating a settlement in the public interest, and
19 seeking and obtaining court approval of this Consent Judgment.

20 **3.2** All payments referenced in paragraphs 3.1.1, 3.1.2, and 3.1.3 above, shall be made
21 payable to Plaintiff's counsel, Blackstone Law APC in a single lump sum payment of \$95,000.
22 Plaintiff's counsel shall distribute the payment amounts as set forth herein to CPG and OEHHA.
23 Plaintiff's counsel will provide Diggs with wire instructions and a W-9 form. No payment shall be
24 due before Diggs has received wire instructions and has confirmed receipt of same.

25 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

26 **4.1** (i) CPG's Public Release of Proposition 65 Claims. Plaintiff, acting on its own behalf and
27 in the public interest, and on behalf of its past and current agents, representatives, attorneys, successors,
28 and assigns (CPG Releasers), releases Diggs and its parents, subsidiaries, affiliated entities under

1 common ownership, its directors, officers, principals, agents, employees, attorneys, insurers, accountants,
2 predecessors, successors, and assigns (“Defendant Entities”), each entity to whom Defendant directly or
3 indirectly distributes, ships, or sells the Covered Products including but not limited to downstream
4 distributors, wholesalers, customers, and retailers (including but not limited to Walmart Inc., Wal- Mart
5 Stores, Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com,
6 Inc., Wal-Mart.com USA, LLC, and each of their respective direct and indirect corporate parents,
7 subsidiaries and affiliates, as well as their past, present and future owners, shareholders, directors, officers,
8 employees, attorneys, insurers, representatives, franchisees, members licensees, successors and assigns),
9 franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing
10 entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
11 representatives, predecessors, successors, and assigns (collectively referred to as the “Releasees”) from
12 all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
13 Covered Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
14 constitutes compliance with Proposition 65 with respect to exposures to DEHP from Covered Products as
15 set forth in the Notice. (ii) CPG’s Individual Release of Claims. CPG, in its individual capacity, also
16 provides a release to Diggs and Releasees, which shall be a full and final accord and satisfaction of, as
17 well as a bar to, all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
18 claims, liabilities, and demands of every nature, character, and kind, whether known or unknown,
19 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Covered Products
20 manufactured, imported, sold, distributed by Diggs before the Effective Date. The release in this section
21 shall have no force or effect until payments for the full amount set forth in above Section 7 received by
22 Blackstone Law, APC. It is possible that Claims not known to the Parties arising out of the facts alleged
23 in the Notice or the Complaint and relating to the Covered Product will develop or be discovered.
24 CPG, on behalf of itself and the CPG Releasers, acknowledges that this Consent Judgment is
25 expressly intended to cover and include all such Claims. CPG has full knowledge of the contents of
26 California Civil Code §1542. CPG, on behalf of itself and the CPG Releasers, acknowledges that the
27 Claims released in this Section 4 may include unknown Claims, and nevertheless waives California
28 Civil Code §1542 as to any such unknown Claims. California Civil Code §1542 reads as follows:

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

7 CPG understands and acknowledges that the significance and consequence of this waiver of
8 California civil code §1542.

9 Diggs waives claims against CPG and its attorneys for this matter arising out of CPG and its
10 attorneys seeking enforcement of proposition 65 against Diggs in this matter with respect to the Subject
11 Product. Diggs represents that its signatory to this settlement agreement has full authority to enter into
12 and legally bind Diggs to this settlement agreement.

13 **5. ENFORCEMENT OF JUDGMENT**

14 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
15 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
16 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may
17 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides
18 10 days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent
19 Judgment, and attempts to resolve such Party's failure to comply in an open and good faith manner.

20 **5.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
21 proceeding of any kind to enforce the terms of this Consent Judgment, CPG shall provide a written
22 Notice of Violation ("NOV") to the Defendant. The NOV shall include for each of the Covered
23 Product: the date(s) the alleged violation(s) was observed and the location at which the Covered
24 Product were offered for sale, and shall be accompanied by all test data obtained by CPG regarding
25 the Covered Product, including an identification of the component(s) of the Covered Product that
26 were tested.
27
28

1 **5.2.1 Non-Contested NOV.** CPG shall take no further action of any kind regarding
2 the alleged violation if, within 60 days of receiving such NOV, the Defendant serves a Notice of
3 Election (“NOE”) not to contest the NOV that meets one of the following conditions:

4 (a) A statement that the Covered Product was manufactured and shipped
5 by the Defendant for sale in California before the Effective Date; or

6 (b) A statement that since receiving the NOV the Defendant has taken
7 corrective action by either: (i) taking all steps necessary to bring the sale of the product into
8 compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores
9 in California, as applicable, remove the Covered Product identified in the NOV from sale in California
10 and destroy or return the Covered Product to the Defendant or vendor, as applicable; or (iii) refute the
11 information provided in the NOV.

12 **5.2.2 Contested NOV.** Defendant may serve a Notice of Election (“NOE”)
13 informing CPG of its election to contest the NOV within 60 days of receiving the NOV.

14 (a) In its election, the Defendant may request that the sample(s) of the
15 Covered Product tested by CPG be subject to confirmatory testing at an EPA-accredited laboratory.

16 (b) If the confirmatory testing establishes that the Covered Product does
17 not contain DEHP in excess of the level allowed in Section 2.1, above, CPG shall take no further
18 action regarding the alleged violation. If the testing does not establish compliance with Section 2.1,
19 above, the Defendant may withdraw its NOE to contest the violation and may serve a new NOE
20 pursuant to Section 5.2.1.

21 (c) If the Defendant does not withdraw a NOE to contest the NOV, the
22 Parties shall meet and confer in good faith for a period of no less than 30 days before CPG may seek
23 an order enforcing the terms of this Consent Judgment.

24 **6. ENTRY OF CONSENT JUDGMENT**

25 **6.1** CPG shall file a motion seeking approval of this Consent Judgment pursuant to
26 California Health & Safety Code § 25249.7(f).

27 **6.2** This Consent Judgment is not effective and the Parties shall have no obligation thereunder,
28 unless and until the Court adopts and enters this Consent Judgment as one of the Court’s, and shall be null

1 and void if it is not approved by the Court within one year after it has been fully executed by the Parties
2 or by such additional time as the Parties may agree to in writing.

3 If this Consent Judgment is not approved in full by the Court: (a) this Consent Judgment and
4 any and all prior agreements between the Parties merged herein shall terminate and become null and
5 void, and the actions shall revert to the status that existed prior to the execution date of this Consent
6 Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
7 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor
8 shall any such matter be admissible in evidence for any purpose in this Action, or in any other
9 proceeding; and (c) the Parties agree to meet and confer in good faith to determine whether to modify
10 the terms of the Consent Judgment and to resubmit it for approval.

11 **7. DISMISSAL OF THE ACTION**

12 **7.1** Upon the Court's execution of this Consent Judgment and upon Diggs' completion
13 of its obligations under section 3 of this Consent Judgment, Plaintiff shall dismiss the entire action
14 against all Defendants, including Diggs and Walmart Inc. with prejudice.

15 **8. MODIFICATION OF JUDGMENT**

16 **8.1** This Consent Judgment may be modified only upon written agreement of the Parties
17 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party
18 as provided by law and upon entry of a modified Consent Judgment by the Court.

19 **8.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet
20 and confer with the other Party at least 30 days prior to filing a motion to modify the
21 Consent Judgment.

22 **9. RETENTION OF JURISDICTION**

23 **9.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms
24 of this Consent Judgment under Code of Civil Procedure § 664.6.

25 **10. SERVICE ON THE ATTORNEY GENERAL**

26 **10.1** CPG shall serve a copy of this Consent Judgment, signed by both Parties, on the
27 California Attorney General so that the Attorney General may review this Consent Judgment prior to
28 its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney General

1 has received the aforementioned copy of this Consent Judgment, and in the absence of any written
2 objection by the Attorney General to the terms of this Consent Judgment, the Parties may then submit
3 it to the Court for approval.

4 **11. ATTORNEY FEES**

5 **11.1** Except as specifically provided in Section 3.1.3, each Party shall bear its own costs
6 and attorney fees in connection with this action.

7 **12. ENTIRE AGREEMENT**

8 **12.1** This Consent Judgment contains the sole and entire agreement and understanding of
9 the Parties with respect to the entire subject matter hereof and any and all prior discussions,
10 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
11 express or implied, other than those contained herein have been made by any Party hereto. No other
12 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
13 any of the Parties.

14 **13. GOVERNING LAW**

15 **13.1** The validity, construction and performance of this Consent Judgment shall be
16 governed by the laws of the State of California, without reference to any conflicts of law provisions
17 of California law.

18 **13.2** The terms of this Consent Judgment shall be governed by the laws of the State of
19 California. In the event that Proposition 65 or any portion of Proposition 65 is repealed, preempted,
20 or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
21 Consent Judgment are rendered inapplicable or are no longer required as a result of any such repeal
22 or preemption, or rendered inapplicable by reason of law generally as to the Covered Product, then
23 the Defendant subject to this Consent Judgment may provide written notice to CPG of any asserted
24 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
25 respect to, and to the extent that, the Covered Product are so affected, without any shall have no
26 recourse to claw back payments already made in accordance to Section 3 of this Consent Judgment.
27 Nothing in this Consent Judgment shall be interpreted to relieve a Defendant from any obligation to
28 comply with any pertinent state or federal law or regulation.

1 **13.3** The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted and
4 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
6 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees
7 that any statute or rule of construction providing that ambiguities are to be resolved against the
8 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
9 regard, the Parties hereby waive California Civil Code § 1654.

10 **14. EXECUTION AND COUNTERPARTS**

11 **14.1** This Consent Judgment may be executed in counterparts and by means of facsimile or
12 portable document format (pdf), which taken together shall be deemed to constitute one document
13 and have the same force and effect as original signatures.

14 **15. NOTICES**

15 **15.1** Any notices under this Consent Judgment shall be by both personal delivery or First-
16 Class Mail and by email.

17 If to CPG:

18 Jonathan M. Genish, Esq.
19 Blackstone Law, APC
20 8383 Wilshire Blvd., Suite 745
21 Beverly Hills, CA 90211
22 jgenish@blackstonepc.com

23 If to Diggs:

24 Kristine Forderer, Esq.
25 Cooley LLP
26 3 Embarcadero Center 20th Floor
27 San Francisco, CA 94111-4004
28 kforderer@cooley.com

1 **16. AUTHORITY TO STIPULATE**

2 **16.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized by
3 the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
4 Party represented and legally to bind that Party.

5 **AGREED TO:**

AGREED TO:

6
7 Date: March 5, 2024

Date: March 13, 2024

8
9 By:



Consumer Protection Group, LLC

By:



Diggs Inc.

10
11 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

12
13
14 Dated: _____

15
16 _____
Judge of the Superior Court
Hon. Gregory Keosian

17 297809901