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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 KENNEDY INTERNATIONAL, INC.,

15 Defendant.

Case No.: CGC-23-609861

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: August 1, 2024

Hearing Time: 9:30 AM

Complaint Filed: October 19, 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 Kennedy International, Inc.
4 (“Kennedy” 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. Kennedy 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 lead from its sales of *Kitchen Details*® olive oil bottles, UPC # 633125206158
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. Lead is
13 listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and
14 birth defects or other reproductive harm.

15 1.3 **Notice of Violation/Action.** On or about November 7, 2022, Balabbo served
16 Kennedy and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of *Kitchen Details*®
19 olive oil bottles, UPC # 633125206158 exposes users in California to lead. No public enforcer has
20 brought and is diligently prosecuting the claims alleged in the Notice. On October 19, 2023,
21 Balabbo 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.

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1 1.5 Defendant denies the material allegations contained in Balabbo'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 *Kitchen Details*® olive oil
10 bottles, UPC # 633125206158 that are distributed, shipped into California and offered for sale in
11 California by Kennedy.

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: REFORMULATION AND/OR WARNINGS**


15 3.1 **Reformulation of Covered Products.** As of the Effective Date, or within ninety
16 (90) days after the Effective Date, and continuing thereafter, Covered Products that Kennedy
17 directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
18 Reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure
19 warning pursuant to §§ 3.3 - 3.4, below. For purposes of this Settlement Agreement, a
20 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
21 3.2, below. The warning requirement set forth in §§ 3.3 - 3.4 shall not apply to any Reformulated
22 Product.

23 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
24 that produce a wipe test result no higher than 1 microgram (µg) of lead when analyzed pursuant to
25 NIOSH method no. 9100.


26 3.3 **Clear and Reasonable Warning.** As of the Effective Date, or within 90 days after
27 the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth
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1 in this §§ 3.3 and 3.4 must be provided for all Covered Products that Kennedy manufacturers,
2 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
3 shall be no obligation for Kennedy to provide an exposure warning for Covered Products that
4 entered the stream of commerce prior to the Effective Date, or within 90 days after the Effective
5 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
6 3.3(a) or (b), respectively:

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

8  **WARNING:** This product can expose you to chemicals including lead, which
9 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.

10 (b) **Alternative Warning:** Kennedy may, but is not required to, use the
11 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

13 **3.4** A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
14 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
15 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
16 triangle with a black outline, except that if the sign or label for the Covered Products does not use
17 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
18 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
19 to or printed on the Covered Products’ packaging or labeling, or on a placard, shelf tag, sign or
20 electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is
21 displayed with such conspicuousness, as compared with other words, statements, or designs as to
22 render it likely to be read and understood by an ordinary individual under customary conditions of
23 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
24 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
25 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
26 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
27 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Kennedy
28 shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with

1 applicable warning regulations adopted by the State of California’s Office of Environmental Health
2 Hazard Assessment (“OEHHA”).

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

17 **3.5 Compliance with Warning Regulations.** The Parties agree that Kennedy shall be
18 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
19 Settlement Agreement or by complying with warning regulations adopted by the State of
20 California’s OEHHA applicable to the Covered Product and the exposure at issue after the Effective
21 Date, or within 90 days after the Effective Date.

22 **4. MONETARY TERMS**

23 **4.1 Civil Penalty.** Kennedy shall pay \$2,000.00 as a Civil Penalty pursuant to Health
24 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
25 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
26 Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

1 4.1.1 Within ten (10) days of the Effective Date, Kennedy shall issue two
2 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
3 to (b) "Brodsky Smith in Trust for Balabbo" in the amount of \$500.00. 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

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

11 For United States Postal Service Delivery:

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

17 For Non-United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 1001 I Street
22 Sacramento, CA 95814

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

25 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Kennedy shall pay
26 \$19,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs
27 incurred as a result of investigating, bringing this matter to the attention of Kennedy, litigating and
28 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
of Civil Procedure § 1021.5.

5. **RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
acting on her own behalf, and on behalf of the public interest, and Kennedy, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,

1 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
2 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
3 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
4 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
5 retailers, including but not limited to Kennedy, and its parents, subsidiaries, and affiliates,
6 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of
7 Proposition 65 based on exposure to lead from use of the Covered Products manufactured,
8 distributed, or sold by Kennedy prior to the Effective Date, or within 90 days after the Effective
9 Date, as set forth in the Notice. It is the Parties’ intention that this Consent Judgment shall have
10 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
11 her, or its interests or the public interest shall be permitted to pursue and take any action with respect
12 to any violation of Proposition 65 based on exposure to lead from use of the Covered Products that
13 was alleged in the Complaint, or that could have been brought pursuant to the Notice against
14 Kennedy and the Downstream Releasees (“Proposition 65 Claims”). Kennedy’s compliance with
15 the terms of this Consent Judgment constitutes compliance with Proposition 65 by Kennedy with
16 regard to exposure to lead from use of the Covered Products.

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

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

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

14 **6. INTEGRATION**

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

19 **7. GOVERNING LAW**

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

25 **8. NOTICES**

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

For Defendant:

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Todd C. Hunt
Law Office of Todd C. Hunt, APC
30721 Russell Ranch Road, Ste. 140
Westlake Village, CA 91362

And

For Balabbo:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

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

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

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11. MODIFICATION

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

12. ATTORNEY'S FEES

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

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

13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

14.1 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: _____

Date: / 5/14/2024

By: _____
PRECILA BALABBO

By: *henry guindi*
KENNEDY INTERNATIONAL, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: 6/13/24

Date: _____

By: *Précila Balabbo*
PRÉCILA BALABBO

By: _____
KENNEDY INTERNATIONAL, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court