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FILED
ALAMEDA COUNTY
MAY 3 . 2016
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ANTHONY FERREIRO, Plaintiff, v. CHAPIN INTERNATIONAL, INC., Defendant.	CASE NO.: RG16808622 **CONSENT JUDGMENT** Judge: Robert McGuiness Dept.: 22 Hearing Date: May 31, 2016 Hearing Time: 3:00 PM Reservation #: R-1731719

1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro") and Chapin International, Inc., (hereinafter "Chapin"), with Ferreiro and Chapin collectively referred to as the "Parties" and each of them as a "Party." Ferreiro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Chapin employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Ferreiro alleges that Chapin has exposed individuals to Di(2-ethylhexyl)phthalate ("DEHP") from lawn and garden sprayer hoses without providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 **Notices of Violation/Complaint.** On or about July 29, 2015, Ferreiro served Chapin and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Chapin was in violation of Proposition 65 for failing to warn consumers and customers that the lawn and garden sprayer hoses exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On March 22, 2016, Ferreiro filed a complaint in the matter as captioned above ("Complaint").

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

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

2. DEFINITIONS

2.1 **Covered Products.** The term "Covered Products" means sprayers and replacement hoses for sprayers.

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

3. INJUNCTIVE RELIEF: WARNINGS

3.1 Commencing on the August 1, 2016, Chapin shall not manufacture for sale in California any Covered Product with a sprayer hose that contains more than 1,000 parts per million DEHP, unless the Covered Product is accompanied by the following warning: "WARNING: This product contains chemical[s, including lead,][1] known to the State of California to cause birth defects and other reproductive harm. ***Wash hands after handling***."

3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the Covered Product's packaging, labeling, or instruction booklet. The warning shall be prominently affixed to or printed on the packaging, labeling, or instruction booklet and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet

[1] The phrase "chemicals, including lead," may be used for any Covered Product that contains a component made from brass that contains lead as an additionally added ingredient, where such brass comes into contact with the user, so that Chapin remains in compliance with the consent judgment entered in *Mateel Environmental Justice Foundation v. Chapin International*, San Francisco Superior Court, Case No. CGC-08-478535.

that states other safety warnings, if any, concerning the use of the product and shall be at least the same size as those other safety warnings.

4. MONETARY TERMS

4.1 **Civil Penalty.** Chapin shall pay a civil penalty of $2,500.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

4.1.1 Within ten (10) business days of the Effective Date, Chapin shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of $1,875.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of $625.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

4.2 **Attorney Fees.** Chapin shall pay $22,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to Chapin's attention, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5. Payment shall be made within ten (10) business days of the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

4.3 Chapin shall pay the civil penalty and attorney fees in Sections 4.1 and 4.2 within ten (10) days of the Effective Date.

5. RELEASE OF ALL CLAIMS

5.1 This consent judgment is a full, final, and binding resolution between Ferreiro acting in the public interest, and Chapin and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members, including but not limited to W.W. Grainger, Inc., and its subsidiaries and affiliates ("Downstream Defendant Releasees"), of all claims for violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by Chapin prior to the Effective Date. Compliance with the terms of this consent judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any Chapin, Defendant Releasees, and Downstream Defendant Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,

now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured distributed or sold by Chapin or Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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

6. INTEGRATION

6.1 This Consent Judgment contains the sole and entire agreement of the Parties and any 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.

7. GOVERNING LAW

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

8. NOTICES

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

For Chapin:

James Grant
Vice President
Chapin International, Inc.
700 Ellicott Street
P.O. Box 549
Batavia, NY 14021-0549

With a copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower St.
Forty First Floor
Los Angeles, CA 90071

And

For Ferreiro:

Evan Smith
Brodsky & Smith, LLC
2 Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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 Ferreiro 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 and Chapin 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.

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 unless the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

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 certifies 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:

Date: 3/25/16

By: Anthony Ferreiro
ANTHONY FERREIRO

AGREED TO:

Date: 4/1/16

By: [illegible]
CHAPIN INTERNATIONAL, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 5/31/16

Judge of Superior Court

Robert D. McGuinness