

COPY



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FILED
ALAMEDA COUNTY

OCT 05 2016

CLERK OF THE SUPERIOR COURT
By Pam Williams
Deputy

8 *Attorneys for Plaintiff*

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 ANTHONY FERREIRO,
13
14 Plaintiff,
15 vs.
16 SAS SAFETY CORPORATION,
17 Defendant.

Case No.: RG16815132

~~PROPOSED~~ ORDER APPROVING
PROPOSITION 65 SETTLEMENT AND
CONSENT JUDGMENT

Judge: Ioana Petrou

BY FAX

Dept.: 15

Hearing Date: October 5, 2016

Hearing Time: 9:00 AM

Reservation #: R-1769863

18 Plaintiff Anthony Ferreiro and Defendant SAS Safety Corporation have agreed to the
19 terms of the settlement memorialized in the [Proposed] Consent Judgment attached as Exhibit A
20 to the Declaration of Evan J. Smith in Support of Motion to Approve Proposition 65 Settlement
21 and Consent Judgment lodged herewith, and Plaintiff has moved this Court for an Order
22 approving the settlement.

23 After consideration of the papers submitted and the arguments presented, the Court finds
24 that the settlement agreement set forth in the Consent Judgment meets the criteria established by
25 California Health & Safety Code § 25249.7(f)(4), in that:

- 26 1. The injunctive relief required by the Consent Judgment complies with
27 Proposition 65;

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- 2. The reimbursement of fees and costs provided by the Consent Judgment is reasonable under California law; and
- 3. The civil penalty amount to be paid pursuant to the Consent Judgment is reasonable.

Accordingly, the Motion for Approval of the Proposition 65 Settlement is GRANTED.

IT IS SO ORDERED.

Dated: 10/5/16


JUDGE OF THE SUPERIOR COURT



11842246

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[PROPOSED] CONSENT JUDGMENT

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1 **1. Introduction**

2 1.1 On December 28, 2015, Anthony Ferreiro (“Ferreiro”) served SAS Safety
3 Corporation (“SAS Safety”), Rite Aid Corporation (“Rite Aid”) and various public enforcement
4 agencies with a document entitled “Notice of Violation of California Health & Safety Code §
5 25249.6, *et seq.*” (the “Notice”). The Notice provided SAS Safety and such others, including
6 public enforcers, with notice that alleged that SAS Safety was in violation of California Health &
7 Safety Code § 25249.6 (“Proposition 65”), for failing to warn consumers and customers that light
8 weight rain suits, including but not limited to UPC No. 781311068131 (“Product” or “Products”)
9 exposed users in California to the chemical Di(2-ethylhexyl) phthalate (DEHP). No public
10 enforcer has diligently prosecuted the allegations set forth in the Notice.

11 1.2 On May 10, 2016, Ferreiro filed a Complaint for Civil Penalties and Injunctive
12 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG16815132, against SAS
13 Safety alleging violations of Proposition 65.

14 1.3 SAS Safety is a corporation that employs more than ten persons under California
15 Health and Safety Code §25249.6 and offered the Products for sale within the State of California.

16 1.4 Ferreiro’s Complaint alleges, among other things, that SAS Safety sold the
17 Products in California and/or to California citizens, that the Products contains DEHP, and that the
18 resulting exposure violated provisions of Proposition 65, by knowingly and intentionally
19 exposing persons to a chemical known to the State of California to cause both cancer and
20 reproductive toxicity without first providing a clear and reasonable warning to such individuals.

21 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court
22 has jurisdiction over the allegations of violations contained in the Complaint and personal
23 jurisdiction over SAS Safety as to the acts alleged in the Complaint, that venue is proper in the
24 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a
25 resolution of the allegations contained in the Complaint.

26 1.6 The parties enter into this Consent Judgment pursuant to a full settlement of
27 disputed claims between the parties as alleged in the Complaint for the purpose of avoiding
28 prolonged litigation. By execution of this Consent Judgment, SAS Safety does not admit any

1 violation of Proposition 65 and specifically denies that it has committed any such violation.
2 Nothing in this Consent Judgment shall be construed as an admission by SAS Safety of any fact,
3 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
4 construed as an admission by SAS Safety of any fact, issue of law, or violation of law. Nothing
5 in this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that SAS
6 Safety may have in any other future legal proceeding. However, this paragraph shall not diminish
7 or otherwise affect the obligations, responsibilities and duties of SAS Safety under this Consent
8 Judgment.

9 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
10 date that the Consent Judgment is entered by the Court.

11 **2. Injunctive Relief**

12 2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
13 SAS Safety shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to
14 Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3.
15 SAS Safety and its downstream retailers shall have no obligation to label Products that entered the
16 stream of commerce prior to the Effective Date or within ninety (90) days after the Effective
17 Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in
18 compliance with the standard set forth below in section 2.2.

19 2.2 "Reformulated Product" shall mean Product that contains less than or equal to
20 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to CPSC-CH-C1001-09.3
21 Standard Operating Procedure for Determination of Phthalates method.

22 2.3 Commencing on the Effective Date, SAS Safety shall, for all Products it sells or
23 distributes and that is intended for sale in California and that is not a Reformulated Product,
24 provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) below. The
25 warning shall be prominently placed with such conspicuousness as compared with other words,
26 statements, designs, or devices as to render it likely to be read and understood by an ordinary
27 individual under customary conditions before purchase or use. Each warning shall be provided in
28 a manner such that the consumer or user understands to which specific Product the warning

1 applies, so as to minimize the risk of consumer confusion.

2 **(a) Retail Store Sales**

3 **(i) Product Labeling.** SAS Safety shall affix a warning to the
4 packaging, labeling or directly on each Product sold in retail outlets in California
5 by SAS Safety or any person selling the Product that states:

6 **[PROPOSITION 65] WARNING:**

7 This product contains a chemical known to the State of California to cause cancer,
8 birth defects or other reproductive harm.

9 The bracketed text may, but is not required to, be used.

10 **(ii) Point of Sale Warnings.** Alternatively to the Product

11 Labeling set forth in Section 2.3(a)(i) above, SAS Safety may provide
12 warning signs in the form below to its customers in California with
13 instructions to post the warning signs in close proximity to the point of
14 display of the Product.

15 **[PROPOSITION 65] WARNING:**

16 This product contains a chemical known to the State of California to cause cancer,
17 birth defects or other reproductive harm.

18 The bracketed text may, but is not required to, be used.

19 **3. Entry of Consent Judgment**

20 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.

21 Upon entry of this Consent Judgment, Ferreiro and SAS Safety waive their respective rights to a
22 hearing or trial on the allegations of the Complaint and 60-Day Notice.

23 3.2 In the event that the Attorney General objects or otherwise comments on one or
24 more provisions of this Consent Judgment, Ferreiro and SAS Safety agree to take reasonable
25 steps to satisfy such concerns or objections.

26 **4. Matters Covered By This Consent Judgment**

27 4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent
28 Judgment is a final and binding resolution between Ferreiro, acting on his own behalf, and on
behalf of the public and in the public interest, and Defendant SAS Safety, and shall have

1 preclusive effect such that no other person or entity, whether purporting to act in his, her, or its
2 interests or the public interest shall be permitted to pursue and/or take any action with respect to
3 any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought
4 pursuant to the Notice against SAS Safety or its downstream retailers of the Product including but
5 not limited to Rite Aid (“Proposition 65 Claims”). As to alleged exposures to DEHP in the
6 Product, compliance with the terms of this Consent Judgment by SAS Safety is deemed sufficient
7 to satisfy all obligations concerning compliance by SAS Safety and its downstream retailers,
8 including but not limited to Rite Aid with the requirements of Proposition 65 with respect to the
9 Products. Ferreiro, acting on his own behalf, and in the public interest, releases SAS Safety and
10 its predecessors, successors, parents, subsidiaries, affiliated entities, directors, officers,
11 employees, representatives, agents and attorneys and each entity to whom it directly or indirectly
12 distributes or sells Products including, but not limited to, its downstream distributors,
13 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
14 (“Downstream Releasees”) (collectively, “Releasees”) for any violation arising under Proposition
15 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or
16 sold by SAS Safety prior to the Effective Date, as set forth in the Notice. Compliance with the
17 terms of this Consent Judgment constitutes compliance with Proposition 65 by SAS Safety with
18 respect to the alleged or actual failure to warn about exposures to DEHP from the Products
19 manufactured, sold or distributed for sale by SAS Safety after the Effective Date.

20 **4.2 Plaintiff’s Release of Additional Claims.** As to Ferreiro for and in his
21 individual capacity only, this Consent Judgment shall have preclusive effect such that he shall not
22 be permitted to pursue and/or take any action with respect to any other statutory or common law
23 claim, to the fullest extent that any such claim was or could have been asserted by him against
24 SAS Safety or any and all downstream retailers of the Products, including but not limited to Rite
25 Aid and the Releasees, based on their exposure of Ferreiro to DEHP in the Products, or their
26 failure to provide a clear and reasonable warning of exposure to Ferreiro as well as any other
27 claim based in whole or in part on the facts alleged in the Complaint and the Notice, whether
28 based on actions committed by SAS Safety or its downstream retailers of the Products, including

1 but not limited to Rite Aid (“DEHP Exposure Claims”). Plaintiff’s release shall be effective as a
2 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
3 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Ferreiro of any
4 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
5 alleged or actual exposures to DEHP in the Products manufactured, imported, distributed or sold
6 by SAS Safety before the Effective Date.

7 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to
8 Ferreiro’s public release of Proposition 65 Claims set forth in Section 4.1 (“Public Release”) and
9 his individual release of DEHP Exposure Claims set forth in Section 4.2 (“Individual Release”),
10 Ferreiro, acting on his own behalf and on behalf of the public with respect to the Public Release
11 and acting in his individual capacity with respect to the Individual Release, waives all rights to
12 institute any form of legal action, and releases all claims against SAS Safety and its predecessors,
13 successors, parents, subsidiaries, affiliated entities, directors, officers, employees, representatives,
14 agents and attorneys and each entity to whom it directly or indirectly distributes or sells Products
15 including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
16 franchisers, cooperative members, licensors and licensees (“Downstream Releasees”)
17 (collectively, “Releasees”) including but not limited to Rite Aid (including their parents,
18 subsidiaries, affiliates, assigns, and acquiring entities of any of them, who may use, maintain,
19 distribute or sell the Products) for the Proposition 65 Claims and the DEHP Exposure Claims
20 (referred to collectively in this Section as “Claims”). In furtherance of the foregoing, Ferreiro,
21 acting on his own behalf and on behalf of the public with respect to the Public Release and acting
22 in his individual capacity with respect to the Individual Release, waives any and all rights and
23 benefits which he now has, or in the future may have, conferred upon him with respect to the
24 Claims by virtue of the provisions of § 1542 of the California Civil Code, which provides as
25 follows:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
27 **CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER**
28 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**

1 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
2 **HIS SETTLEMENT WITH THE DEBTOR.**

3 4.4 **SAS Safety’s Release of Plaintiff Ferreiro.** SAS Safety, on behalf of
4 itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby
5 waives any and all claims against Ferreiro, his attorneys, and other representatives for any and all
6 actions taken or statements made (or those that could have been taken or made) by Ferreiro and
7 his attorneys and other representatives, whether in the course of investigating claims or otherwise
8 seeking enforcement of Proposition 65 against SAS Safety in this matter.

9 5. **Enforcement of Judgment**

10 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
11 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
12 Alameda County, giving the notice required by law, enforce the terms and conditions contained
13 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party
14 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation
15 of Proposition 65 or this Consent Judgment.

16 6. **Modification of Judgment**

17 6.1 This Consent Judgment may be modified only by written agreement of the parties
18 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
19 provided by law and upon an entry of a modified Consent Judgment by the Court.

20 6.2 Should any court enter final judgment in a case brought by Ferreiro or the People
21 involving the Products that sets forth standards defining when Proposition 65 warnings will or
22 will not be required (“Alternative Standards”), or if the California Attorney General’s office
23 otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney General
24 that is not intended for the purpose of soliciting further input or comments) of Alternative
25 Standards applicable to products that are of the same general type and function as the Products
26 and constructed from the same materials, SAS Safety shall be entitled to seek a modification of
27 this Consent Judgment on sixty (60) days’ notice to Ferreiro so as to be able to utilize and rely on
28 such Alternative Standards in lieu of those set forth in Section 2 of this Consent Judgment.

1 Ferreiro shall not unreasonably contest any proposed application to effectuate such a modification
2 provided that the Products for which such a modification is sought are of the same general type
3 and function as those to which the Alternative Standards apply.

4 **7. Settlement Payment**

5 7.1 In settlement of all the claims referred to in this Consent Judgment, and without
6 any admission of liability therefore, SAS Safety shall make the following monetary payments:

7 7.1.1 **Initial Civil Penalty.** Within fourteen (14) business days of the Effective
8 Date, SAS Safety shall pay a total of \$2,000.00 in civil penalties in accordance with this Section.
9 The Initial Civil Penalty payment will be allocated in accordance with California Health & Safety
10 Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of
11 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil
12 penalty remitted to Ferreiro. Within fourteen (14) business days of the Effective Date, SAS
13 Safety shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the
14 amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of
15 \$500.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following
16 payment address:

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

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

23 For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

1 1001 I Street
2 Sacramento, CA 95814

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

5 7.1.2 **Attorney Fees and Costs.** In addition to the payment above, SAS
6 Safety shall pay \$26,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete
7 reimbursement for Ferreiro's attorneys' fees and costs, including any investigation and laboratory
8 costs or expert fees, incurred in the course of bringing the Complaint and in enforcing Proposition
9 65, including without limitation, preparation of the 60-Day Notice letter and discussions with the
10 office of the Attorney General. Payment shall be made within fourteen (14) business days of the
11 Effective Date and sent to the address for Brodsky & Smith set forth in Section 7.1.1, above.

12 **8. Notices**

13 8.1 Any and all notices between the parties provided for or permitted under this
14 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class
15 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
16 party by the other party to the following addresses:

17 For SAS Safety:

18 Gary A. Wexler, Esq.
19 Thompson Coburn LLP
20 2029 Century Park East
19th Floor
Los Angeles, CA 90067

21 For Ferreiro:

22 Evan J. Smith
23 BRODSKY & SMITH, LLC
24 9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212
T: 877.354.2590

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

27 **9. Authority to Stipulate**

28 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized

1 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
2 the party represented and legally to bind that party.

3 **10. Counterparts**

4 10.1 This Stipulation may be signed in counterparts and shall be binding upon the
5 parties hereto as if all said parties executed the original hereof.

6 **11. Retention of Jurisdiction**

7 11.1 This Court shall retain jurisdiction of this matter to implement the Consent
8 Judgment.

9 **12. Service on the Attorney General**

10 12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the
11 California Attorney General on behalf of the parties so that the Attorney general may review this
12 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)
13 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
14 and in the absence of any written objection by the Attorney General to the terms of this Consent
15 Judgment, the parties may then submit it to the Court for Approval.

16 **13. Entire Agreement**

17 13.1 This Consent Judgment contains the sole and entire agreement and understanding
18 of the parties with respect to the entire subject matter hereof, and any and all discussions,
19 negotiations, commitment and understandings related thereto. No representations, oral or
20 otherwise, express or implied, other than those contained herein have been made by any party
21 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
22 to exist or to bind any of the parties.

23 **14. Governing Law and Construction**

24 14.1 The validity, construction and performance of this Consent Judgment shall be
25 governed by the laws of the State of California, without reference to any conflicts of law
26 provisions of California law.

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15. Court Approval

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

Dated: 8/19/16

Dated: 08/04/2016

By: *Anthony Ferreiro*
Anthony Ferreiro

By: *[Signature]*
SAS Safety Corporation

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 10/5/16

[Signature]
Judge of Superior Court