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COPY

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

FILED  
ALAMEDA COUNTY

SEP 14 2016

CLERK OF THE SUPERIOR COURT  
By Pam Williams  
Deputy

8 *Attorneys for Plaintiff*

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

11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 vs.  
14 ACCESSORIES MARKETING, INC.,  
15 Defendant.

Case No.: RG16821245

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

Judge: Ioana Petrou

Dept.: 15

Hearing Date: September 14, 2016

Hearing Time: 9:00 AM

Reservation #: R-1762626

BY FAX

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

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

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

JUL 27 2016

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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: 9/10/16

  
JUDGE OF THE SUPERIOR COURT



**FILED**  
ALAMEDA COUNTY

SEP 14 2016

CLERK OF THE SUPERIOR COURT

By Pam Williams  
Deputy

1 Evan J. Smith, Esquire (SBN 242352)  
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~~PROPOSED~~ CONSENT JUDGMENT

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1           **1. Introduction**

2           1.1     On February 10, 2016, Anthony Ferreiro ("Ferreiro") served Illinois Tool Works,  
3     Inc. ("ITW"), Accessories Marketing, Inc. ("AMI"), Accessories Marketing Holding Corp., Wal-  
4     Mart Stores, Inc. ("Wal-Mart") and various public enforcement agencies with a document entitled  
5     "Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*" (the "Notice"). The  
6     Notice provided AMI and such others, including public enforcers, with notice that alleged that  
7     AMI was in violation of California Health & Safety Code § 25249.6 ("Proposition 65"), for  
8     failing to warn consumers and customers that tire inflators, including, but not limited to, *Top Off*  
9     *Tire Inflators, UPC No. 716281507021* ("Covered Products") exposed users in California to the  
10    chemical Diisononyl phthalate (DINP). No public enforcer has diligently prosecuted the  
11    allegations set forth in the Notice.

12          1.2     On June 28, 2016, Ferreiro filed a Complaint for Civil Penalties and Injunctive  
13    Relief ("Complaint") in Alameda County Superior Court, Case No. RG16821245, against AMI  
14    alleging violations of Proposition 65.

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

18          1.4     AMI is referred to herein as, "Defendant." Defendant and Ferreiro and/or Plaintiff  
19    are collectively referred to herein as, the "Parties."

20          1.4     Ferreiro's Complaint alleges, among other things, that Defendant sold the Covered  
21    Products in California and/or to California citizens, that the Covered Products contain DINP, and  
22    that the resulting exposure violated provisions of Proposition 65, by knowingly and intentionally  
23    exposing persons to a chemical known to the State of California to cancer without first providing  
24    a clear and reasonable warning to such individuals.

25          1.5     For purposes of this Consent Judgment only, the Parties stipulate that this Court  
26    has jurisdiction over the allegations of violations contained in the Complaint and personal  
27    jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the  
28    County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a

1 resolution of the allegations contained in the Complaint.

2 1.6 The Parties enter into this Consent Judgment pursuant to a full settlement of  
3 disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding  
4 prolonged litigation. By execution of this Consent Judgment, Defendant does not admit any  
5 violation of Proposition 65 and specifically denies that it have committed any such violation.  
6 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
7 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
8 construed as an admission by Defendant of any fact, issue of law, or violation of law. Nothing in  
9 this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that  
10 Defendant may have in any other future legal proceeding. However, this paragraph shall not  
11 diminish or otherwise affect the obligations, responsibilities and duties of Defendant under this  
12 Consent Judgment.

13 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
14 date that the Consent Judgment is entered by the Court.

15 **2. Injunctive Relief**

16 2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,  
17 Defendant shall only ship, sell, or offer for sale in California, Reformulated Covered Products  
18 pursuant to Section 2.3 or Covered Products that are labeled with a clear and reasonable warning  
19 pursuant to Section 2.4.

20 2.2 Notwithstanding the above or anything else in this Consent Judgment, Defendant  
21 and their downstream retailers shall have no obligation to reformulate or label Covered Products  
22 that were manufactured prior to the Effective Date or within ninety (90) days after the Effective  
23 Date. For purposes of this Settlement Agreement, a "Reformulated Covered Products" are  
24 Covered Products that are in compliance with the standard set forth below in section 2.3.

25 2.3 "Reformulated Covered Products" shall mean Covered Products that contains less  
26 than or equal to 1,000 parts per million ("ppm") of DINP when analyzed pursuant to CPSC-CH-  
27 C1001-09.3 Standard Operating Procedure for Determination of Phthalates method.

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2.4 Commencing on the Effective Date, Defendant shall, for all Covered Products they sell or distribute and that are intended for sale in California and that is not Reformulated Covered Products, provide clear and reasonable warnings as set forth in subsections 2.4(a) and (b) below. The warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Covered Products the warning applies, so as to minimize the risk of consumer confusion.

**(a) Retail Store Sales**

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

**[PROPOSITION 65] WARNING:**  
This product contains a chemical known to the State of California to cause cancer.  
The bracketed text may, but is not required to, be used.

**(ii) Point of Sale Warnings.** Alternatively to the Covered Products Labeling set forth in Section 2.4(a)(i) above, Defendant may provide warning signs in the form below to its customers in California with instructions to post the warning signs in close proximity to the point of display of the Covered Products. Such instruction sent to Defendant's customers shall be sent by certified mail, return receipt requested.

**[PROPOSITION 65] WARNING:**  
This product contains a chemical known to the State of California to cause cancer.  
The bracketed text may, but is not required to, be used.

**(b) Mail Order Catalog Warning.** In the event that Defendant directly sell Covered Products via mail order catalog directly to consumers located in California after the

1 Effective Date that is not a Reformulated Covered Product, Defendant shall provide a warning for  
2 Covered Products sold via mail order catalog to such California residents. A warning that is  
3 given in a mail order catalog shall be in the same type size or larger than the Covered Products'  
4 description text within the catalog. The following warning shall be provided on the same page  
5 and in the same location as the display and/or description of the Covered Products:

6 **[PROPOSITION 65] WARNING:**

7 This product contains a chemical known to the State of California to cause cancer.

8 The bracketed text may, but is not required to, be used. Where it is impracticable to provide the  
9 warning on the same page and in the same location as the display and/or description of the  
10 Covered Product, Defendant may utilize a designated symbol to cross reference the applicable  
11 warning and shall define the term "designated symbol" with the following language on the inside  
12 of the front cover of the catalog or on the same page as any order form for the Covered Products:

13 **[PROPOSITION 65] WARNING:** Certain products identified with this symbol  
14 ▼ and offered for sale in this catalog contain a chemical known to the State of  
15 California to cause cancer.

16 The bracketed text may, but is not required to, be used. The designated symbol must appear on  
17 the same page and in close proximity to the display and/or description of the Covered Products.  
18 On each page where the designated symbol appears, Defendant must provide a header or footer  
19 directing the consumer to the warning language and definition of the designated symbol.

20 (c) **Internet Sales Warning.** In the event that Defendant sells Covered  
21 Products via the internet directly to consumers located in California after the Effective Date that  
22 is not a Reformulated Covered Product, Defendant shall provide a warning for such Covered  
23 Products sold via the internet to such California residents. A warning that is given on the internet  
24 shall be in the same type size or larger than the Covered Products' description text and shall be  
25 given in conjunction with the direct sale of the Covered Products. The warning shall appear  
26 either: (a) on the same web page on which the Covered Products are displayed; (b) on the same  
27 web page as the order form for the Covered Products; (c) on the same page as the price for the  
28 Covered Products; or (d) on one or more web pages displayed to a purchaser during the checkout

1 process. The following warning shall be provided:

2 **[PROPOSITION 65] WARNING:**

3 This product contains a chemical known to the State of California to cause cancer.

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

5 **3. Entry of Consent Judgment**

6 3.1 The Parties hereby request that the Court promptly enter this Consent Judgment.

7 Upon entry of this Consent Judgment, Ferreiro and Defendant waive their respective rights to a  
8 hearing or trial on the allegations of the Complaint and 60-Day Notice.

9 3.2 In the event that the Attorney General objects or otherwise comments on one or  
10 more provisions of this Consent Judgment, Ferreiro and Defendant agree to take reasonable steps  
11 to satisfy such concerns or objections.

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

13 4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent  
14 Judgment is a final and binding resolution between Ferreiro, acting on his own behalf, and on  
15 behalf of the public and in the public interest, and Defendant, and shall have preclusive effect  
16 such that no other person or entity, whether purporting to act in his, her, or its interests or the  
17 public interest shall be permitted to pursue and/or take any action with respect to any violation of  
18 Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the  
19 Notice against ITW, Defendant or its downstream retailers of the Covered Product including but  
20 not limited to Wal-Mart, and each of their respective affiliates and subsidiaries, parents, directors,  
21 officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and  
22 each entity to whom ITW, AMI, and/or Wal-Mart directly or indirectly distributes or sells the  
23 Covered Products, including but not limited to, downstream distributors, wholesalers, customers,  
24 retailers, marketplace retailers, franchisees, cooperative members and licensees (collectively, the  
25 "Releasees") ("Proposition 65 Claims"). As to alleged exposures to DINP in the Covered  
26 Product, compliance with the terms of this Consent Judgment by Defendant is deemed sufficient  
27 to satisfy all obligations concerning compliance by ITW and Defendant and its downstream  
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1 retailers, including but not limited to Wal-Mart with the requirements of Proposition 65 with  
2 respect to the Covered Products.

3           **4.2 Plaintiff's Release of Additional Claims.** As to Ferreiro for and in his  
4 individual capacity only, this Consent Judgment shall have preclusive effect such that he shall not  
5 be permitted to pursue and/or take any action with respect to any other statutory or common law  
6 claim, to the fullest extent that any such claim was or could have been asserted by him against  
7 ITW or Defendant or any and all downstream retailers of the Covered Products, including but not  
8 limited to Wal-Mart, and the Releasees based on their exposure of Ferreiro to DINP in the  
9 Covered Product, or their failure to provide a clear and reasonable warning of exposure to  
10 Ferreiro as well as any other claim based in whole or in part on the facts alleged in the Complaint  
11 and the Notice, whether based on actions committed by Defendant or their downstream retailers  
12 of the Covered Product, including but not limited to Wal-Mart ("DINP Exposure Claims").

13           **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to  
14 Ferreiro's public release of Proposition 65 Claims set forth in Section 4.1 ("Public Release") and  
15 his individual release of DINP Exposure Claims set forth in Section 4.2 ("Individual Release"),  
16 Ferreiro, acting on his own behalf and on behalf of the public with respect to the Public Release  
17 and acting in his individual capacity with respect to the Individual Release, waives all rights to  
18 institute any form of legal action, and releases all claims against ITW or Defendant, the  
19 Releasees, and their downstream retailers, including but not limited to Wal-Mart (including their  
20 parents, subsidiaries, affiliates, assigns, and acquiring entities of any of them, who may use,  
21 maintain, distribute or sell the Covered Products) for the Proposition 65 Claims and the DINP  
22 Exposure Claims (referred to collectively in this Section as "Claims"). In furtherance of the  
23 foregoing, Ferreiro, acting on his own behalf and on behalf of the public with respect to the  
24 Public Release and acting in his individual capacity with respect to the Individual Release, waives  
25 any and all rights and benefits which he now has, or in the future may have, conferred upon him  
26 with respect to the Claims by virtue of the provisions of § 1542 of the California Civil Code,  
27 which provides as follows:  
28

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

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

12           **5.    Enforcement of Judgment**

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

19           **6.    Modification of Judgment**

20           6.1    This Consent Judgment may be modified only by written agreement of the Parties  
21 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
22 provided by law and upon an entry of a modified Consent Judgment by the Court.

23           6.2    Should any court enter final judgment in a case brought by Ferreiro or the People  
24 involving the Covered Products that sets forth standards defining when Proposition 65 warnings  
25 will or will not be required ("Alternative Standards"), or if the California Attorney General's  
26 office otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney  
27 General that is not intended for the purpose of soliciting further input or comments) of Alternative  
28 Standards applicable to products that are of the same general type and function as the Covered

1 Products and constructed from the same materials, Defendant shall be entitled to seek a  
2 modification of this Consent Judgment on sixty (60) days' notice to Ferreiro so as to be able to  
3 utilize and rely on such Alternative Standards in lieu of those set forth in Section 2 of this  
4 Consent Judgment. Ferreiro shall not unreasonably contest any proposed application to effectuate  
5 such a modification provided that the Covered Products for which such a modification is sought  
6 are of the same general type and function as those to which the Alternative Standards apply.

7 **7. Settlement Payment**

8 7.1 In settlement of all the claims referred to in this Consent Judgment, and without  
9 any admission of liability therefore, AMI shall make the following monetary payments:

10 7.1.1 **Civil Penalty.** Within seven (7) business days of the Effective Date, AMI  
11 shall pay a total of \$4,000.00 in civil penalties in accordance with this Section. The Initial Civil  
12 Penalty payment will be allocated in accordance with California Health & Safety Code §§  
13 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental  
14 Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil penalty remitted to  
15 Ferreiro. Within seven (7) business days of the Effective Date, AMI shall issue two separate  
16 checks for the civil penalty payment to (a) "OEHHA" in the amount of three-thousand U.S.  
17 dollars (\$3,000.00); and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of one-  
18 thousand U.S. dollars (\$1,000.00). Payment owed to Ferreiro pursuant to this Section shall be  
19 delivered to the following payment address:

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

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

25 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2  
3 Mike Gyurics  
4 Fiscal Operations Branch Chief  
5 Office of Environmental Health Hazard Assessment  
6 1001 I Street  
7 Sacramento, CA 95814

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

10 7.1.3 **Attorney Fees and Costs.** In addition to the payment above, AMI shall  
11 pay \$36,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement for  
12 Ferreiro's attorneys' fees and costs, including any investigation and laboratory costs or expert  
13 fees, incurred in the course of bringing the Complaint and in enforcing Proposition 65, including  
14 without limitation, preparation of the 60-Day Notice letter and discussions with the office of the  
15 Attorney General. Payment shall be made within seven (7) business days of the Effective Date  
16 and sent to the address for Brodsky & Smith set forth in Section 7.1.1, above.

17 **8. Notices**

18 8.1 Any and all notices between the Parties provided for or permitted under this  
19 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class  
20 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
21 party by the other party to the following addresses:

22 For Defendant:

23 George Gigounas  
24 Shelby Miller  
25 DLA Piper LLP (US)  
26 555 Mission Street, Suite 2400  
27 San Francisco, California 94105

28 For Ferreiro:

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

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

3 **9. Authority to Stipulate**

4 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
5 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
6 the party represented and legally to bind that party.

7 **10. Counterparts**

8 10.1 This Stipulation may be signed in counterparts and shall be binding upon the  
9 Parties hereto as if all said Parties executed the original hereof.

10 **11. Retention of Jurisdiction**

11 11.1 This Court shall retain jurisdiction of this matter to implement the Consent  
12 Judgment.

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

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

20 **13. Entire Agreement**

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

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**14. Governing Law and Construction**

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

**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: July 13, 2016

By: Anthony Ferrero  
Anthony Ferrero

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Accessories Marketing, Inc.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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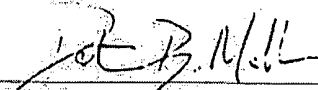
**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Anthony Ferreiro

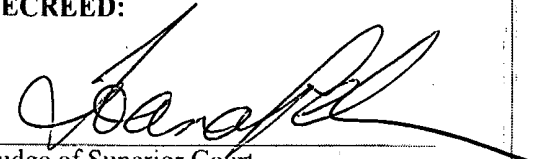
Dated: 7/13/2016

By:  \_\_\_\_\_

Accessories Marketing, Inc.

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

Dated: 9/14/16

  
\_\_\_\_\_  
Judge of Superior Court