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FILED
ALAMEDA COUNTY

JUL 14 2017

Attorneys for Plaintiff

CLERK OF THE SUPERIOR COURT
By *Debbie Sheets*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

RAPID DOMINANCE CORP.,

Defendant.

Case No.: RG17845842
CONSENT JUDGMENT
Judge: ~~Robert B. Freedman~~ *Paul D. Herbert*
Dept.: 20
Hearing Date: July 14, 2017
Hearing Time: 2:00 PM
Reservation #: R-1852950

BY FAX

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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 Rapid Dominance Corp. (“Rapid Dominance” or “Defendant”) with Ferreiro and Defendant 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. Rapid Dominance 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 Defendant has exposed individuals to Di(2-ethylhexyl) phthalate (DEHP) from sniper gloves 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 cancer and reproductive toxicity.

1.3 **Notices of Violation/Complaint.** On or about June 15, 2016, Ferreiro served Rapid Dominance 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 Defendant was in violation of Proposition 65 for failing to warn consumers and customers that Rapdom sniper gloves exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On January 17, 2017, Ferreiro filed a complaint (the “Complaint”) in the matter.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant 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 1.5 Defendant denies the allegations contained in Ferreiro’s Notice and Complaint and
2 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
7 remedy or defense that Defendant may have in any other future legal proceeding. However, this
8 paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of
9 Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term “Covered Products” means Rapdom sniper gloves,
12 including but not limited to UPC No. 847418019176 that are manufactured, distributed and/or
13 offered for sale in California by Rapid Dominance, and that contain DEHP.

14 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 Commencing ninety (90) days after the Effective Date, Rapid Dominance shall not
18 manufacture, import, or purchase for sale in California any Covered Product that contains more
19 than 1,000 parts per million DEHP, unless the Covered Product is accompanied by the following
20 warning: “WARNING: This product contains a chemical known to the State of California to cause
21 cancer, birth defects and other reproductive harm.” There shall be no obligation for Rapid
22 Dominance to label Covered Products that entered the stream of commerce prior to ninety (90) days
23 after the Effective Date.

24 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
25 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
26 on the packaging or labeling and displayed with such conspicuousness, as compared with other
27 words, statements, or designs as to render it likely to be read and understood by an ordinary
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1 individual under customary conditions of purchase or use. A warning may be contained in the same
2 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
3 concerning the use of the product and shall be at least the same size as those other safety warnings.

4 **4. MONETARY TERMS**

5 **4.1 Civil Penalty.** Within ten (10) business days of the Effective Date, Rapid
6 Dominance shall pay a Civil Penalty of \$1,000.00 pursuant to Health and Safety Code section
7 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with
8 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
9 Assessment and the remaining 25% of the penalty remitted to Ferreiro, as provided by California
10 Health & Safety Code § 25249.12(d).

11 **4.1.1** Within ten (10) business days of the Effective Date, Rapid Dominance
12 shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
13 \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$250.00.
14 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
15 address:

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

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

22 For United States Postal Service Delivery:

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

28 For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street

1 Sacramento, CA 95814

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

4 4.2 **Attorney Fees.** Rapid Dominance shall pay \$15,500.00 to Brodsky & Smith, LLC
5 (“Brodsky Smith”) as complete reimbursement for Plaintiff Ferreiro’s attorneys’ fees and costs
6 incurred as a result of investigating, bringing this matter to Rapid Dominance’s attention, litigating
7 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
8 Code of Civil Procedure section 1021.5. Payment shall be made within ten (10) business days of
9 the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

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

12 **5. RELEASE OF ALL CLAIMS**

13 5.1 This consent judgment is a full, final, and binding resolution between Ferreiro acting
14 on his own behalf and on behalf of the public and in the public interest, and Rapid Dominance, and
15 its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, agents
16 and affiliates, and their successors and assigns (“Defendant Releasees”), and all entities from whom
17 they obtain and to whom they directly or indirectly distribute or sell Covered Products, including
18 but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,
19 licensees retailers, franchisees, and cooperative members (“Downstream Defendant Releasees”),
20 of all claims for violations of Proposition 65 based on exposure to DEHP from Covered Products
21 as set forth in the Notice and the Complaint (whether alleged or could have been brought), with
22 respect to any Covered Products manufactured, distributed, or sold by Rapid Dominance prior to
23 the Effective Date. Compliance with the terms of this consent judgment constitutes compliance
24 with Proposition 65 with regard to the Covered Products and shall have preclusive effect such that
25 no other person or entity, whether purporting to act in his, her, or its interests or the public interests
26 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65
27 that was alleged in the Notice or the Complaint, or that could have been brought pursuant to the
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1 Notice against Rapid Dominance, or each of its Defendant Releasees or its Downstream Defendant
2 Releasees.

3 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
4 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
5 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
6 legal action and releases any Rapid Dominance, Defendant Releasees, and Downstream Defendant
7 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
8 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
9 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed
10 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
11 to or arising from Covered Products manufactured distributed or sold by Rapid Dominance or
12 Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro
13 hereby specifically waives any and all rights and benefits which she now has, or in the future may
14 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
15 provides as follows:

16
17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
19 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
20 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
21 THE DEBTOR.

22 5.3 Rapid Dominance waives any and all claims against Ferreiro, his attorneys and other
23 representatives, for any and all actions taken or statements made (or those that could have been
24 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
26 and/or with respect to Covered Products.

27 **6. INTEGRATION**

28 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

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
13 by the other party at the following addresses:

14 For Defendant:

15 Peter F. Jazayeri
16 Jaz, A Professional Legal Corporation
17 1925 Century Park East, Suite 1380
18 Los Angeles, CA 90067

18 And

19 For Ferreiro:

20 Evan Smith
21 Brodsky & Smith, LLC
22 2 Bala Plaza, Suite 510
23 Bala Cynwyd, PA 19004

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

27 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
28 which shall be deemed an original, and all of which, when taken together, shall constitute one and
the same document.

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

3 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
4 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
5 and Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
8 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
9 30 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and it is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
20 the unsuccessful party has acted with substantial justification. For purposes of this Consent
21 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
22 Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

23 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
24 pursuant to law.

25 **13. RETENTION OF JURISDICTION**

26 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

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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: 6/25/17

Date: _____

By: Anthony Ferrero
ANTHONY FERRERO

By: _____
RAPID DOMINANCE CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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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:

AGREED TO:

Date: _____

Date: 6-02-17

By: _____

By: [Signature]

ANTHONY FERREIRO

RAPID DOMINANCE CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 7/14/2017

Paul D. Herbert
Judge of Superior Court

PAUL D. HERBERT