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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 Aarco Products, Inc. (“Aarco” 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. Aarco 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 Diisononyl phthalate (DINP) from bulletin boards without providing clear and reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notices of Violation/Complaint.** On or about September 6, 2016, Ferreiro served Aarco, 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 dry gear bags exposed users in California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On January 18, 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.

1.5 Defendant 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

1 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
2 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
3 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
4 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
5 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7  
8 2.1 **Covered Products.** The term "Covered Products" means Arco Products Bulletin  
9 Boards that are manufactured, distributed and/or offered for sale in California by Arco, and that  
10 contain DINP.

11 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: WARNINGS**

14 3.1 As of the date this Consent Judgment is signed by both Parties, Arco shall not  
15 manufacture or order from any supplier any Covered Products intended for retail sale in California  
16 that contains DINP on any component to which consumers are exposed in excess of 0.1% (1,000  
17 ppm) (hereinafter "Reformulated Products") unless the Covered Product is accompanied by a  
18 warning that complies with Article 6 of Title 27 of the California Code of Regulations. Covered  
19 Products sold by Arco before the date this Consent Judgment is signed by both Parties may sell  
20 through without a warning even if not Reformulated Products. Until August 30, 2018, the warning  
21 shall consist of either:

22 (a) The statement: "WARNING: This product contains a chemical known to the State  
23 of California to cause cancer."; or

24 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle  
25 with a bold black outline to the left of the word "warning" in bold all capital letters, followed  
26 by the statement "This product can expose you to chemicals including Diisononyl phthalate  
27 (DINP), which is known to the State of California to cause cancer. For more information,  
28 go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)"; or (2) a warning consisting of a symbol that is a black



1 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
2 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):  
3

4 For United States Postal Service Delivery:

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

10 For Non-United States Postal Service Delivery:

11 Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 1001 I Street  
15 Sacramento, CA 95814

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

18 4.2 **Attorney Fees.** Aarco shall pay \$12,000.00 to Brodsky & Smith, LLC ("Brodsky  
19 Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a  
20 result of investigating, bringing this matter to Aarco's attention, litigating and negotiating and  
21 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil  
22 Procedure section 1021.5. Payment shall be made within fourteen (14) business days of the  
23 Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
26 acting on his own behalf, and on behalf of the public interest, and Aarco, and its parents,  
27 shareholders, directors, officers, employees, representatives, agents, attorneys, divisions,  
28 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,  
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 Sears Holdings Corporation and

1 Sears Holdings Management Corporation ("Upstream and Downstream Releasees"), of all claims  
2 for violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in  
3 the Notice, with respect to any Covered Products manufactured, distributed, or sold by Aarco prior  
4 to the Effective Date. This Consent Judgment shall have preclusive effect such that no other person  
5 or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted  
6 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
7 the Complaint, or that could have been brought pursuant to the Notice against Aarco or its Upstream  
8 and Downstream Releasees of the Product including but not limited to ("Proposition 65 Claims").  
9 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
10 with regard to the Covered Products.

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

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

1  
2 5.3 Aarco waives any and all claims against Ferreiro, his attorneys and other  
3 representatives, for any and all actions taken or statements made (or those that could have been  
4 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
5 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
6 and/or with respect to Covered Products.

7 **6. INTEGRATION**

8 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
9 any and all prior negotiations and understandings related hereto shall be deemed to have been  
10 merged within it. No representations or terms of agreement other than those contained herein exist  
11 or have been made by any Party with respect to the other Party or the subject matter hereof.

12 **7. GOVERNING LAW**

13 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California and apply within the State of California. In the event that Proposition 65 is repealed or  
15 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
16 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
17 to the extent that, Covered Products are so affected.

18 **8. NOTICES**

19 8.1 Unless specified herein, all correspondence and notices required to be provided  
20 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
21 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
22 by the other party at the following addresses:

23 For Defendant:

24 Garth N. Ward  
25 Lewis Brisbois Bisgaard & Smith LLP  
26 701 B Street, Suite 1900  
27 San Diego, CA 92101

28 And

For Ferreiro:

Evan Smith

1 Brodsky & Smith, LLC  
2 9595 Wilshire Blvd., Ste. 900  
3 Beverly Hills, CA 90212

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

6 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

7 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
8 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
9 the same document.

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

12 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
13 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment  
14 and Defendant agrees it shall support approval of such Motion.

15 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
16 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
17 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
18 30 days, the case shall proceed on its normal course.

19 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
20 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
21 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
22 its normal course on the trial court's calendar.

23 **11. MODIFICATION**

24 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
25 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

26 **12. ATTORNEY'S FEES**

27 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
28 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

1 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
2 Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

3 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
4 pursuant to law.

5 **13. RETENTION OF JURISDICTION**

6 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
7 Consent Judgment.

8 **14. AUTHORIZATION**

9 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
10 respective Parties and have read, understood and agree to all of the terms and conditions of this  
11 document and certifies that he or she is fully authorized by the Party he or she represents to execute  
12 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
13 explicitly provided herein each Party is to bear its own fees and costs.  
14

15 **AGREED TO:**

**AGREED TO:**

16 Date: 3/26/18

Date: 3/23/2018

17 By: Anthony Ferreiro  
18 ANTHONY FERREIRO

By: Gregory D. Martino  
19 AARCO PRODUCTS, INC.

20  
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22 Dated: 5/17/2018

Frank Roesch  
23 Judge of Superior Court  
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