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FILED
 ALAMEDA COUNTY

APR 26 2017

CLERK OF THE SUPERIOR COURT
 By Nancy A. Rose
 NANCY ROSE, Deputy

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

12 ANTHONY FERREIRO,
 13 Plaintiff,

14 v.

15 GREAT STAR INDUSTRIAL USA, LLC,
 16 Defendant.

Case No.: RG17849307

CONSENT JUDGMENT

Judge: Sandra K. Bean

Dept.: 301

Hearing Date: April 26, 2017

Hearing Time: 2:30 PM

Reservation #: R-1828741

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1 **1. Introduction**

2 1.1 On September 20, 2016, Anthony Ferreiro (“Ferreiro”) served Great Star Industrial
3 USA, LLC (“Great Star”), Lowe’s Companies, Inc., Lowe’s Home Centers, LLC (collectively,
4 “Lowe’s”), Goldblatt Industries, LLC (“Goldblatt”) and various public enforcement agencies with
5 a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*”
6 (the “Notice”). The Notice provided Great Star and such others, including public enforcers, with
7 notice that alleged that Great Star was in violation of California Health & Safety Code § 25249.6
8 (“Proposition 65”), for failing to warn consumers and customers that Pace Setter Grout Bags;
9 UPC No. 084389027445 (“Product” or “Products”) exposed users in California to the chemical
10 Di(2-ethylhexyl) phthalate (DEHP). No public enforcer has diligently prosecuted the allegations
11 set forth in the Notice.

12 1.2 On February 14, 2017, Ferreiro filed a Complaint for Civil Penalties and
13 Injunctive Relief (“Complaint”) in Alameda County Superior Court, Case No. RG17849307,
14 against Great Star alleging violations of Proposition 65.

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

17 1.4 Great Star and Ferreiro are collectively referred to herein as, the “Parties”

18 1.5 The Complaint alleges, among other things, that Great Star sold the Products in
19 California and/or to California citizens, that the Products contain DEHP, and that the resulting
20 exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons
21 to a chemical known to the State of California to cause both cancer and reproductive toxicity
22 without first providing a clear and reasonable warning to such individuals.

23 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
24 has jurisdiction over the allegations of violations contained in the Complaint and personal
25 jurisdiction over Great Star as to the acts alleged in the Complaint, that venue is proper in the
26 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a
27 resolution of the allegations contained in the Complaint.

28 1.7 The Parties enter into this Consent Judgment pursuant to a full settlement of

1 disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding
2 prolonged litigation. By execution of this Consent Judgment, Great Star does not admit any
3 violation of Proposition 65 and specifically denies that it has committed any such violation.
4 Nothing in this Consent Judgment shall be construed as an admission by Great Star of any fact,
5 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
6 construed as an admission by Great Star of any fact, issue of law, or violation of law. Nothing in
7 this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that Great
8 Star may have in any other future legal proceeding. However, this paragraph shall not diminish
9 or otherwise affect the obligations, responsibilities and duties of Great Star under this Consent
10 Judgment. Notwithstanding the allegation in the Notice and this Complaint, Great Star maintains
11 that it has not knowingly manufactured, or caused to be manufactured, the Product for sale in
12 California in violation of Proposition 65.

13 1.8 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 Great Star shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to
18 Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3.
19 Great Star and its downstream retailers shall have no obligation to label Products that entered the
20 stream of commerce prior to the Effective Date or within ninety (90) days after the Effective
21 Date. For purposes of this Consent Judgment, a "Reformulated Product" is Product that is in
22 compliance with the standard set forth below in section 2.2.

23 2.2 "Reformulated Product" shall mean Product that contains less than or equal to
24 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to CPSC-CH-C1001-09.3
25 Standard Operating Procedure for Determination of Phthalates method.

26 2.3 Commencing ninety (90) days after the Effective Date, Great Star shall, for all
27 Products it sells or distributes and that is intended for sale in California and that is not a
28 Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.3(a)

1 below. The warning shall be prominently placed with such conspicuousness as compared with
2 other words, statements, designs, or devices as to render it likely to be read and understood by an
3 ordinary individual under customary conditions before purchase or use. Each warning shall be
4 provided in a manner such that the consumer or user understands to which specific Product the
5 warning applies, so as to minimize the risk of consumer confusion.

6 (a) **Retail Store Sales**

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

10 **WARNING:** This product contains a chemical known to the State of California to
11 cause cancer, and birth defects or other reproductive harm.

12 Or

13 **WARNING:** This product can expose you to chemicals including Di(2-
14 ethylhexyl) phthalate, which is known to the State of California to cause cancer
and birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

15 2.4 **Exception to Warning Requirement.** The warning requirements set forth in
16 Section 2.3 shall not apply to any Reformulated Product

17 3. **Entry of Consent Judgment**

18 3.1 The Parties hereby request that the Court promptly enter this Consent Judgment.
19 Upon entry of this Consent Judgment, Ferreiro and Great Star waive their respective rights to a
20 hearing or trial on the allegations of the Complaint and 60-Day Notice.

21 3.2 In the event that the Attorney General objects or otherwise comments on one or
22 more provisions of this Consent Judgment, Ferreiro and Great Star agree to take reasonable steps
23 to satisfy such concerns or objections.

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

25 4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent Judgment is a
26 final and binding resolution between Ferreiro, acting on his own behalf and in the public interest,
27 and Great Star, its parents, direct or indirect equity holders, direct or indirect controlling persons,
28 any entities affiliated with any of the foregoing, subsidiaries, affiliated entities under common

1 ownership, directors, officers, agents, representatives, employees, attorneys (all persons or
2 entities listed in this subparagraph as related to Great Star are hereinafter referred to as “Great
3 Star Releasees”) or any entity to whom they directly or indirectly distribute or sell the Products
4 including, but not limited to their downstream distributors, wholesalers, customers, franchisers,
5 cooperative members, licensors and licensees, marketplace hosts and retails (including but not
6 limited to Lowe’s, its parent and all subsidiaries and affiliates thereof and their respective
7 employees, agents and assigns, and Goldblatt), and the successors and assigns of any of them
8 (“Downstream Releasees”) and shall have preclusive effect such that no other person or entity,
9 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
10 pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in
11 the Notice or Complaint, or that could have been brought pursuant to the Notice against Great
12 Star, Great Star Releasees, and/or Downstream Releasees, including but not limited to Lowe’s
13 (“Proposition 65 Claims”). Plaintiff hereby unconditionally and forever discharges Great Star,
14 Goldblatt, Lowe’s, its parent and all subsidiaries and affiliates thereof and their respective
15 employees, agents and assigns. As to alleged exposures to DEHP in the Product, compliance
16 with the terms of this Consent Judgment by Great Star is deemed sufficient to satisfy all
17 obligations concerning compliance by Great Star, Great Star Releasees, and/or Downstream
18 Releasees, including but not limited to Lowe’s with the requirements of Proposition 65 with
19 respect to the Products.

20 **4.2 Plaintiff’s Private 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 any and all of Great Star, Great Star Releasees and/or Downstream Releasees, of the Products,
25 including but not limited to Lowe’s, Goldblatt, based on their exposure of Ferreiro to DEHP in
26 the Products, or their failure to provide a clear and reasonable warning of exposure to Ferreiro as
27 well as any other claim based in whole or in part on the facts alleged in the Complaint and the
28 Notice, whether based on actions committed by Great Star or its Representatives or its

1 downstream retailers of the Products, including but not limited to Lowe's ("DEHP Exposure
2 Claims").

3 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to
4 Ferreiro's public release of Proposition 65 Claims set forth in Section 4.1 ("Public Release") and
5 his individual release of DEHP Exposure Claims set forth in Section 4.2 ("Individual Release"),
6 Ferreiro, acting on his own behalf and on behalf of the public with respect to the Public Release
7 and acting in his individual capacity with respect to the Individual Release, waives all rights to
8 institute any form of legal action, and releases all claims against Great Star, any and all of Great
9 Star's Representatives and Great Star's downstream retailers, including but not limited to Lowe's
10 and Goldblatt (including their parents, subsidiaries, affiliates, assigns, and acquiring entities of
11 any of them, who may use, maintain, distribute or sell the Products) for the Proposition 65
12 Claims and the DEHP Exposure Claims (referred to collectively in this Section as "Claims"). In
13 furtherance of the foregoing, Ferreiro, acting on his own behalf and on behalf of the public with
14 respect to the Public Release and acting in his individual capacity with respect to the Individual
15 Release, waives any and all rights and benefits which he now has, or in the future may have,
16 conferred upon him with respect to the Claims by virtue of the provisions of § 1542 of the
17 California Civil Code, which provides as follows:

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

23 **4.4 Great Star's Release of Plaintiff Ferreiro.** Great Star, on behalf of itself, its past
24 and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and
25 all claims against Ferreiro, his attorneys, and other representatives for any and all actions taken or
26 statements made (or those that could have been taken or made) by Ferreiro and his attorneys and
27 other representatives, whether in the course of investigating claims or otherwise seeking
28 enforcement of Proposition 65 against Great Star in this matter.

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5. Enforcement of Judgment

5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of Alameda County, giving the notice required by law, enforce the terms and conditions contained herein. In any proceeding brought by either party to enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of Proposition 65 or this Consent Judgment. Before bringing any such noticed motion or order to show cause, each party agrees to provide the party against which the motion or order would be brought not less than ten (10) days written notice and a reasonable period to cure the alleged breach of this Consent Judgment.

6. Modification of Judgment

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

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

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7. Settlement Payment

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

7.1.1 **Initial Civil Penalty.** Within fifteen (15) business days of the Effective Date, Great Star shall pay a total of \$2,000.00 in civil penalties in accordance with this Section. The Initial Civil Penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil penalty remitted to Ferreiro. Within fifteen (15) business days of the Effective Date, Great Star shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00. 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.

1 7.1.2 **Final Civil Penalty.** Sixty (60) days after the Effective Date, Great Star
2 shall make a final civil penalty payment of \$2,000.00 on the same terms as set forth in Section
3 7.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code of Regulations,
4 Section 3203(c), Ferreiro agrees that the Final Civil Penalty payment shall be waived in its
5 entirety if, on or before the Final Civil Penalty payment is due, an officer of Great Star provides
6 Ferreiro with a signed declaration certifying that all Products it ships for sale or distributes for
7 sale in California as of the date of its certification are Reformulated Products or are marked with
8 the warnings required by this Consent Decree (hereinafter "Labeled Product") and that Great Star
9 will continue to offer only Reformulated Products or Labeled Products in California in the future.
10 The option to provide a declaration certifying its complete early reformulation or labeling of the
11 Products in lieu of making the Final Civil Penalty payment otherwise required by this Section is a
12 material term, and time is of the essence.

13 7.1.3 **Attorney Fees and Costs.** In addition to the payment above, Great Star
14 shall pay \$19,000.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement
15 for Ferreiro's attorneys' fees and costs, including any investigation and laboratory costs or expert
16 fees, incurred in the course of bringing the Complaint and in enforcing Proposition 65, including
17 without limitation, preparation of the 60-Day Notice letter and discussions with the office of the
18 Attorney General. Payment shall be made within fifteen (15) business days of the Effective Date
19 and sent to the address for Brodsky & Smith set forth in Section 7.1.1, above.

20 **8. Notices**

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

25 For Great Star:

26 James M. Mabon
27 Law Office of James M. Mabon
28 10800 Sikes Place
 Suite 300
 Charlotte, NC 28277

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For Ferreiro:

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

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. Authority to Stipulate

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

10. Counterparts

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

11. Retention of Jurisdiction

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

12. Service on the Attorney General

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

13. Entire Agreement

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitment and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
2 to exist or to bind any of the Parties.

3 **14. Governing Law and Construction**

4 14.1 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California, without reference to any conflicts of law
6 provisions of California law.

7 **15. Court Approval**

8 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
9 effect and cannot be used in any proceeding for any purpose.

10 **IT IS SO STIPULATED:**

11
12 Dated: _____ Dated: 2/23/2017

13
14 By: _____ By: John Herman
15 Anthony Ferreiro Great Star Industrial USA, LLC

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

17
18 Dated: _____
19 Judge of Superior Court

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2 to exist or to bind any of the Parties.

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4 14.1 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California, without reference to any conflicts of law
6 provisions of California law.

7 **15. Court Approval**

8 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
9 effect, and cannot be used in any proceeding for any purpose.

10 **IT IS SO STIPULATED:**

11
12 Dated: 3/16/17 Dated: _____

13
14 By: Anthony Ferrero By: _____
15 Anthony Ferrero Great Star Industrial USA, LLC

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

17 Dated: 4-26-2017
18 
19 Judge of Superior Court
20 Sandra K. Bean
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