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Attorneys for Plaintiff

**ENDORSED
FILED
ALAMEDA COUNTY**
APR 02 2018

CLERK OF THE SUPERIOR COURT
By Jhalisa Castaneda Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,
v.
PETEDGE, INC.,
Defendant.

Case No.: RG17870840
CONSENT JUDGMENT
Judge: Jo-Lynne Q. Lee
Dept.: 18
Hearing Date: February 6, 2018
Hearing Time: 3:00 PM
Reservation #: R-1910096

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro") and Petedge, Inc. ("Petedge"
4 or "Defendant") with Ferreiro and Defendant collectively referred to as the "Parties" and each of
5 them as a "Party." Ferreiro is an individual residing in California who seeks to promote awareness
6 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. Petedge is a person in the course of doing business for
8 purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
10 individuals to Di(2-ethylhexyl) phthalate (DEHP) from grooming aprons without providing clear
11 and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical
12 known to the State of California to cause cancer and reproductive toxicity.

13 **1.3 Notices of Violation/Complaint.** On or about February 28, 2017, Ferreiro served
14 Petedge, and various public enforcement agencies with a document entitled "60-Day Notice of
15 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Defendant
16 was in violation of Proposition 65 for failing to warn consumers and customers that waterproof
17 grooming aprons, exposed users in California to DEHP. No public enforcer has brought and is
18 diligently prosecuting the claims alleged in the Notice. On August 9, 2017, Ferreiro filed a
19 complaint (the "Complaint") in the matter.

20 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
22 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
23 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
24 claims which were or could have been raised in the Complaint based on the facts alleged therein
25 and/or in the Notice.

26 **1.5** Defendant denies the material allegations contained in Ferreiro's Notice and
27 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
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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 **2.1 Covered Products.** The term "Covered Products" means the products listed below
8 that have been distributed, sold and/or offered for sale in California by Petedge, and that contain
9 DEHP in excess of the limit set forth in Section 3.1 hereof.

- 10 • Top Performance, TP701 17 - TP Waterproof Apron Blk
- 11 • Top Performance, TP701 79 - TP Waterproof Apron Pur
- 12 • Top Performance, TP6785 17 - TP Printed Value Apron Zebra Blk
- 13 • Top Performance, TP6785 19 - TP Printed Value Apron Zebra Blu
- 14 • Top Performance, TP6785 79 - TP Printed Value Apron Zebra Pur
- 15 • Dog is Good, DI5158 17 - DG Dog Lover Groom Apron Blk
- 16 • Top Performance, TP4608 36 17 - TP Anti Fatigue Mat 36x24In Blk
- 17 • Top Performance, TP4608 36 19 - TP Anti Fatigue Mat 36x24In Blu
- 18 • Top Performance, TP4608 36 79 - TP Anti Fatigue Mat 36x24In Pur

16 **2.2 Effective Date.** The term "Effective Date" means the date this Consent Judgment is
17 entered as a Judgment of the Court.

18 **3. INJUNCTIVE RELIEF: WARNINGS**

19 **3.1** Commencing within ninety (90) days after the Effective Date, Petedge shall not
20 distribute, sell, or offer for sale any Covered Products intended for retail sale in California with any
21 component that contains DEHP in excess of 0.1% (1,000 ppm) unless the Covered Product is
22 accompanied by a warning that complies with Article 6 of Title 27 of the California Code of
23 Regulations. Until August 30, 2018, the warning shall consist of either:

24 (a) The statement: "WARNING: This product contains a chemical known to the State
25 of California to cause cancer and birth defects or other reproductive harm;" or

26 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle
27 with a bold black outline to the left of the word "warning" in bold all capital letters, followed
28 by the statement "This product can expose you to chemicals including Di(2-

1 ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and
2 birth defects or other reproductive harm. For more information, go to
3 www.P65Warnings.ca.gov;”¹

4 On and after August 30, 2018, the warning set forth in Section 3.1(b) shall be used.

5 3.2 The warning provided pursuant to § 3.1, above, shall be affixed to or printed on the
6 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
7 on the packaging or labeling and displayed with such conspicuousness, as compared with other
8 words, statements, or designs as to render it likely to be read and understood by an ordinary
9 individual under customary conditions of purchase or use. A warning may be contained in the same
10 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
11 concerning the use of the product and shall be at least the same size as those other safety warnings.
12 Petedge and its downstream retailers shall have no obligation to label Covered Products that entered
13 the stream of commerce prior to the Effective Date or within ninety (90) days after the Effective
14 Date.

15 **4. MONETARY TERMS**

16 4.1 **Civil Penalty.** Petedge shall pay a Civil Penalty of \$2,000.00 pursuant to Health and
17 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
18 Code § 25192, with 75% of these funds remitted to the State of California’s Office of
19 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
20 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within fourteen (14) business days of the Effective Date, Petedge shall
22 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
23 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00.
24 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
25 address:

26
27 ¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 Evan J. Smith, Esquire
2 Brodsky & Smith, LLC
3 Two Bala Plaza, Suite 510
4 Bala Cynwyd, PA 19004

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

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

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

27 4.3 Petedge shall pay the Civil Penalty and attorney fees identified in Sections 4.1 and
28 4.2 within fourteen (14) days of the Effective Date.

29 5. **RELEASE OF ALL CLAIMS**

30 5.1 This consent judgment is a full, final, and binding resolution between Ferreiro acting
31 on his own behalf, and on behalf of the public interest, and Petedge, and its parents, shareholders,
32 directors, officers, employees, representatives, agents, attorneys, divisions, subdivisions,
33 subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and

1 assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly
2 or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
3 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
4 cooperative members, including but not limited to Sears Holdings Management Corporation, Sears
5 Holdings Corporation (collectively, "Sears"), and their respective subsidiaries, affiliates and
6 parents, franchisees, cooperative members and licensees ("Downstream Releasees"), of all claims
7 for violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in
8 the Notice, with respect to any Covered Products manufactured, distributed, or sold by Petedge
9 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other
10 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
11 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
12 alleged in the Complaint, or that could have been brought pursuant to the Notice against Petedge
13 or its Downstream Releasees of the Product including but not limited to ("Proposition 65 Claims").
14 Compliance with the terms of this consent judgment constitutes compliance with Proposition 65
15 with regard to the Covered Products.

16 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
17 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
18 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action and releases any Petedge, Defendant Releasees, and Downstream Releasees from any
20 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
21 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
22 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
23 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
24 from Covered Products manufactured distributed or sold by Petedge, Defendant Releasees or
25 Downstream Releasees.

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

4 **6. INTEGRATION**

5 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
6 any and all prior negotiations and understandings related hereto shall be deemed to have been
7 merged within it. No representations or terms of agreement other than those contained herein exist
8 or have been made by any Party with respect to the other Party or the subject matter hereof.

9 **7. GOVERNING LAW**

10 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed or
12 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
13 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
14 to the extent that, Covered Products are so affected.

15 **8. NOTICES**

16 8.1 Unless specified herein, all correspondence and notices required to be provided
17 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
18 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
19 by the other party at the following addresses:

20 For Defendant:

21 Anatoly M. Darov
22 Darov & Associates US PLLC
23 225 Franklin Street, FL26
Boston, Massachusetts 02110

24 And

25 For Ferreiro:

26 Evan Smith
27 Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
28 Beverly Hills, CA 90212

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13. AUTHORIZATION

13.1 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: 12/18/17

Date: 11/6/17

By: Anthony Ferreiro
ANTHONY FERREIRO

By: [Signature]
PETEDGE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 4/2/18

[Signature]
Judge of Superior Court

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. COUNTERPARTS; FACSIMILE SIGNATURES**

4 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
5 which shall be deemed an original, and all of which, when taken together, shall constitute one and
6 the same document.

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

9 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
10 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
11 and Defendant agrees it shall support approval of such Motion.

12 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
13 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
14 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
15 30 days, the case shall proceed on its normal course.

16 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
18 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
19 its normal course on the trial court's calendar and all monetary payments paid by Petedge to
20 Plaintiff and Plaintiff's counsel pursuant to Section 4 hereof shall be returned to Petedge within 7
21 calendar days after the conclusion of such conference or written demand of Petedge.

22 **11. MODIFICATION**

23 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
24 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

25 **12. RETENTION OF JURISDICTION**

26 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

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