

MAY 23 2018
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8 *Attorneys for Plaintiff*

FILED
ALAMEDA COUNTY

JUL 11 2018

CLERK OF THE SUPERIOR COURT
By *[Signature]*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11
12 Plaintiff,
13 vs.
14 STUTTERHEIM NORTH AMERICA,
15 INC.,
16 Defendant.

Case No.: RG18898843

**[PROPOSED] ORDER APPROVING
PROPOSITION 65 SETTLEMENT AND
[PROPOSED] CONSENT JUDGMENT**

Judge: Julia Spain

Dept.: 520

Hearing Date: July 11, 2018

Hearing Time: 2:00 PM

Reservation #: R-1964800

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

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

- 26 1. The injunctive relief required by the Consent Judgment complies with
27 Proposition 65;
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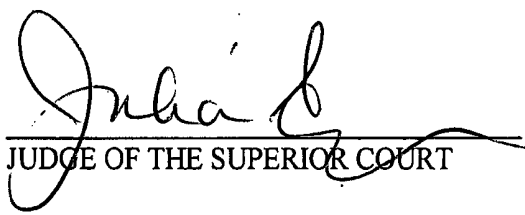
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2. The reimbursement of fees and costs provided by the Consent Judgment is reasonable under California law; and
3. The civil penalty amount to be paid pursuant to the Consent Judgment is reasonable.

Accordingly, the Motion for Approval of the Proposition 65 Settlement is GRANTED.

IT IS SO ORDERED.

Dated: 7/11/18


JUDGE OF THE SUPERIOR COURT

MAY 23 2018

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH, LLC.
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
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7 *Attorneys for Plaintiff*

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

11 ANTHONY FERREIRO,
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Exhibit A

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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 Stutterheim North America, Inc., a wholly owned subsidiary of and AB Svenska Regn and AB Svenska Regn (collectively, "Stutterheim" 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 that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Stutterheim is alleged to be 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 Stutterheim raincoats 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 **Notice of Violation/Complaint.** On or about October 31, 2017, Ferreiro served Stutterheim, and various public enforcement agencies with documents 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 Stutterheim Stockholm Waterproof Hooded Raincoats exposed users in California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On March 28, 2018, 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 material allegations contained in Ferreiro's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means Stutterheim Stockholm
10 Waterproof Raincoats that are manufactured, distributed and/or offered for sale in California by
11 Stutterheim.

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

14 **3. INJUNCTIVE RELIEF: WARNINGS**

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

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

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

6 For products manufactured on and after August 30, 2018, the warning set forth in Section 3.1(b)
7 shall be used. Any language that appears within the brackets [...] may, but is not required to, be
8 included in the warning.

9 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
10 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
11 automatic process, providing that the warning is displayed with such conspicuousness, as compared
12 with other words, statements, or designs as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use. A warning may be contained
14 in the same section of the packaging, labeling, or instruction booklet that states other safety
15 warnings, if any, concerning the use of the product and shall be at least the same size as those other
16 safety warnings.

17 4. MONETARY TERMS

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

23 4.1.1 Within ten (10) days of the Effective Date, Stutterheim shall issue two
24 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
25

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 (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00. Payment owed to
2 Ferreiro pursuant to this Section shall be delivered to the following payment address:

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

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

23 4.2 **Conditional Civil Penalty.** One Hundred Eighty (180) days after the Effective
24 Date, Stutterheim shall make a Conditional Civil Penalty payment of \$1,000.00 on the same terms
25 as set forth in Section 4.1.1 pertaining to the Civil Penalty. Pursuant to Title 11 California Code of
26 Regulations, Section 3203(c), Ferreiro agrees that the Conditional Civil Penalty payment shall be
27 waived in its entirety if, on or before the date the Conditional Civil Penalty payment is due, an
28 officer of Stutterheim provides Ferreiro with a signed declaration certifying that all Covered
Products it ships for sale or distributes for sale in California as of the date of its certification are
Reformulated Products or are marked with the warnings required by this Consent Decree
(hereinafter "Labeled Product") and that Stutterheim will continue to offer only Reformulated
Products or Labeled Products in California in the future. The option to provide a declaration

1 certifying its complete early reformulation or labeling of the Covered Products in lieu of making
2 the Conditional Civil Penalty payment otherwise required by this Section is a material term, and
3 time is of the essence.

4 4.3 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Stutterheim shall pay
5 \$18,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff
6 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
7 Stutterheim's attention, litigating and negotiating and obtaining judicial approval of a settlement in
8 the public interest, pursuant to Code of Civil Procedure section 1021.5.

9 **5. RELEASE OF ALL CLAIMS**

10 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
11 acting on his own behalf, and on behalf of the public interest, and Stutterheim, and its parents,
12 shareholders, members, directors, officers, managers, employees, representatives, agents,
13 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
14 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
15 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
16 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
17 retailers, franchisees, and cooperative members, including but not limited to Nordstrom, Inc.
18 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
19 DINP from Covered Products as set forth in the Notice, with respect to any Covered Products
20 manufactured, distributed, or sold by Stutterheim prior to the Effective Date. This Consent
21 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
22 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
23 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
24 been brought pursuant to the Notice against Stutterheim or its Downstream Releasees of the Product
25 including but not limited to ("Proposition 65 Claims"). Compliance with the terms of this consent
26 judgment constitutes compliance with Proposition 65 with regard to the Covered Products.
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1 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
2 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Stutterheim, Defendant Releasees, and Downstream Releasees from any
5 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
9 from Covered Products manufactured, distributed, or sold by Stutterheim, Defendant Releasees or
10 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
11 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
12 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
13 which provides as follows:

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

18 5.3 Stutterheim waives any and all claims against Ferreiro, his attorneys and other
19 representatives, for any and all actions taken or statements made (or those that could have been
20 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
22 and/or with respect to Covered Products.

23 6. INTEGRATION

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.
28

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 Michael J. Marotte
14 Schenck, Price, Smith & King, LLP
15 220 Park Avenue
16 PO Box 991
 Florham Park, NJ 07932

17 And

18 For Ferreiro:

19 Evan Smith
20 Brodsky & Smith, LLC
 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and
26 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 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 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.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood and agree to all of the terms and conditions of this
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document and certify 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: 5/22/18

Date: May 15th 2018

By: Anthony Ferrero
ANTHONY FERRERO

By: Peter Buchkranz
SILVERSTEIN NORTH AMERICA,
INC. and AB Svenska Regn

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 7/11/18

Julia A. Spain
Judge of Superior Court
JULIA A. SPAIN