

v.r



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FILED
ALAMEDA COUNTY

MAR 21 2019

CLERK OF THE SUPERIOR COURT

By Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 TRACTOR SUPPLY COMPANY,

15 Defendant.

Case No.: RG18914383

CONSENT JUDGMENT

Judge: Jo-Lynne Q. Lee

Dept.: 18

Hearing Date: January 31, 2019

Hearing Time: 3:00 PM

Reservation #: R-2022876

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CONSENT JUDGMENT

BY FAX

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 Tractor Supply
4 Company ("Tractor Supply" or "Defendant") with Ferreiro and Defendant collectively referred to
5 as the "Parties" and each of them as a "Party." Ferreiro is an individual residing in California and
6 alleges that he seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Tractor
8 Supply is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal.
9 Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to diisononyl phthalate (DINP) from its sales of chainsaw safety gloves and tow strap
12 carry cases without providing a clear and reasonable exposure warning under Proposition 65. DINP
13 is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

14 **1.3 Notices of Violation/Complaint.** On or about December 12, 2017, and January 10,
15 2018, Ferreiro served Tractor Supply, Tractor Supply Co. of Texas, LP ("Tractor Supply Co. of
16 Texas"), and various public enforcement agencies with documents entitled "60-Day Notices of
17 Violation" pursuant to Health & Safety Code §25249.7(d) (collectively, the "Notices"), alleging
18 that Defendant violated Proposition 65 for failing to warn consumers and customers that use of
19 chainsaw safety gloves and tow strap carry cases expose users in California to DINP. No public
20 enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On July 26,
21 2018, Ferreiro filed a complaint (the "Complaint") in the matter.

22 **1.4** Certain testing obtained and exchanged by the parties in this action also reported
23 concentrations of di(2-ethylhexyl)phthalate (DEHP) in excess of 1,000 parts per million in chainsaw
24 safety gloves and tow strap carry cases manufactured, distributed and/or sold by Defendant.

25 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
27 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
28

1 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
2 claims which were or could have been raised in the Complaint based on the facts alleged therein
3 and/or in the Notices.

4 1.6 Defendant denies the material allegations contained in the Notices and Complaint
5 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
6 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
7 shall compliance with this Consent Judgment constitute or be construed as an admission by
8 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
9 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
10 responsibilities, and duties of Defendant under this Consent Judgment.

11 **2. DEFINITIONS**

12 2.1 **Covered Products.** The term "Covered Products" means chainsaw safety gloves
13 and tow strap carry cases that are manufactured, distributed and/or offered for sale in California by
14 Tractor Supply, Trilink Saw Chain, LLC and/or Zhejiang Runva Mechanical & Electrical Co., Ltd.

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

17 **3. INJUNCTIVE RELIEF: WARNINGS**

18 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
19 thereafter, Covered Products that Tractor Supply directly manufactures, imports, distributes, sells,
20 or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below;
21 or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.
22 For purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in
23 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
24 and 3.4 shall not apply to any Reformulated Product.

25 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
26 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of DINP and
27 DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
28

1 3580A and 8270C or other methodology utilized by federal or state government agencies for the
2 purpose of determining the phthalate content in a solid substance.

3 **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing
4 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
5 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
6 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
7 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
8 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
9 described in §§ 3.3(a) or (b), respectively:

10 (a) **Warning.** The "Warning" shall consist of the statement:

11 ⚠ **WARNING:** This product can expose you to chemicals including diisononyl
12 phthalate (DINP), which is known to the State of California to cause cancer. For
13 more information go to www.P65Warnings.ca.gov.

14 or

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

19 (b) **Alternative Warning:** Tractor Supply may, but is not required to, use the alternative
20 short-form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

21 ⚠ **WARNING:** Cancer - www.P65Warnings.ca.gov.

22 or

23 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

24 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
25 "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to
26 the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral
27 triangle with a black outline, except that if the sign or label for the Covered Product does not use
28 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
than the height of the word "**WARNING:**". The warning shall be affixed to or printed on the

1 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
2 automatic process, providing that the warning is displayed with such conspicuousness, as compared
3 with other words, statements, or designs as to render it likely to be read and understood by an
4 ordinary individual under customary conditions of purchase or use. A warning may be contained
5 in the same section of the packaging, labeling, or instruction booklet that states other safety
6 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
7 those other safety warnings.

8 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
9 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
10 Judgment or by complying with warning requirements adopted by the State of California's Office
11 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** Tractor Supply shall pay \$3,000.00 as a Civil Penalty pursuant to
14 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
15 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
16 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
17 § 25249.12(d).

18 **4.1.1** Within ten (10) business days of the receipt by Tractor Supply of the order
19 approving entry of this Consent Judgment and the entered Consent Judgment, Tractor Supply
20 shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
21 \$2,250.00; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$750.00.
22 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
23 address:

24 Evan J. Smith, Esquire
25 Brodsky & Smith, LLC
26 Two Bala Plaza, Suite 510
26 Bala Cynwyd, PA 19004

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

1 For United States Postal Service Delivery:

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

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

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

15 4.2 **Attorneys' Fees.** Within ten (10) business days of receipt by Tractor Supply of the
16 order approving entry of this Consent Judgment and the entered Consent Judgment, Tractor Supply
17 shall pay \$21,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
18 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
19 Tractor Supply' attention, litigating and negotiating and obtaining judicial approval of a settlement
20 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

21 **5. RELEASE OF ALL CLAIMS**

22 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
23 acting on his own behalf, and on behalf of the public interest, and Tractor Supply, and its parents,
24 shareholders, members, directors, officers, managers, employees, representatives, agents,
25 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
26 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
27 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
28 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
retailers, franchisees, and cooperative members, including but not limited to Tractor Supply Co. of
Texas, Trilink Saw Chain, LLC, and Zhejiang Runva Mechanical & Electrical Co., Ltd.
("Upstream/Downstream Releasees"), of all claims for violations of Proposition 65 based on

1 exposure to DINP from Covered Products as set forth in the Notices, with respect to any Covered
2 Products manufactured, distributed, or sold by Tractor Supply, Defendant Releasees, and/or
3 Upstream/Downstream Releasees prior to the Effective Date. This Consent Judgment shall have
4 preclusive effect such that no other person or entity, whether purporting to act in his, her, or its
5 interests or the public interest shall be permitted to pursue and/or take any action with respect to
6 any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought
7 pursuant to the Notices against Tractor Supply, Defendant Releasees, and/or the
8 Upstream/Downstream Releasees of the Covered Products ("Proposition 65 Claims"). Compliance
9 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to
10 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 Tractor Supply, Defendant Releasees, and Upstream/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 Tractor Supply,
20 Defendant Releasees or Upstream/Downstream Releasees. With respect to the foregoing waivers
21 and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and benefits
22 which he now has, or in the future may have, conferred by virtue of the provisions of § 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
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
28 SETTLEMENT WITH THE DEBTOR.

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

6 **6. INTEGRATION**

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

11 **7. GOVERNING LAW**

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

17 **8. NOTICES**

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

22 For Defendant:

23 Jay W. Connolly
24 Seyfarth Shaw LLP
25 560 Mission Street
26 Suite 3100
27 San Francisco, California 94105-2930

28 And

 For Ferreiro:

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

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

16 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
17 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
18 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
19 30 days, the case shall proceed on its normal course.

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

24 **11. MODIFICATION**

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

27 **12. ATTORNEY'S FEES**

28 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties and have read, understood and agree to all of the terms and conditions of this
9 document and certify that he or she is fully authorized by the Party he or she represents to execute
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
11 explicitly provided herein each Party is to bear its own fees and costs.

12 **AGREED TO:**

AGREED TO:

13
14 Date: 12/12/18
15
16 By: Anthony Ferreiro
17 ANTHONY FERREIRO

Date: 11-17-18
By: Karen S. Austin
TRACTOR SUPPLY COMPANY

18
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20
21 Dated: 3/21/19
22 49934265v.5 T.L.

Jo-Lynne Q. Lee
Judge of Superior Court
JO-LYNNE Q. LEE