



FILED
ALAMEDA COUNTY

SEP 20 2018

CLERK OF THE SUPERIOR COURT

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Attorneys for Plaintiff

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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 ADJ PRODUCTS, LLC,

15 Defendant.

Case No.: RG18909960

CONSENT JUDGMENT

Judge: Sandra K. Bean

Dept.: 110

Hearing Date: September 19, 2018

Hearing Time: 2:30 PM

Reservation #: R-1986165

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 ADJ Products, LLC
4 (“ADJ” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Ferreiro is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. ADJ is alleged to be a person in the course
8 of doing business for 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 its sales of headphones without providing
11 clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a
12 chemical known to the State of California to cause cancer and reproductive toxicity.

13 1.3 **Notice of Violation/Complaint.** On or about March 9, 2018, Ferreiro served ADJ,
14 and various public enforcement agencies with documents entitled “Notice of Violation of California
15 Health & Safety Code §25249.5, *et seq.*” (the “Notice”), alleging that Defendant was in violation
16 of Proposition 65 for failing to warn consumers and customers that American Audio Headphones
17 exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting
18 the claims alleged in the Notices. On June 22, 2018, Ferreiro filed a complaint (the “Complaint”)
19 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 headphones that are
8 manufactured, distributed and/or offered for sale in California by ADJ.

9 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
10 entered as a Judgment of the Court.

11 **3. INJUNCTIVE RELIEF; WARNINGS**

12 3.1 As of the date this Consent Judgment is signed by both Parties, ADJ shall not
13 manufacture or order from any supplier any Covered Products intended for retail sale in California
14 that contains DEHP on any component to which consumers are exposed in excess of 0.1% (1,000
15 ppm) (hereinafter "Reformulated Products") unless the Covered Product is accompanied by a
16 warning that complies with Article 6 of Title 27 of the California Code of Regulations. Covered
17 Products manufactured, distributed or sold by ADJ before the date this Consent Judgment is signed
18 by both Parties may sell through without a warning even if not Reformulated Products. Until
19 August 30, 2018, the warning shall consist of either:

20 (a) The statement: "WARNING: This product contains a chemical known to the State of
21 California to cause cancer and birth defects or other reproductive harm."; or (b) (1) A
22 symbol consisting of a black exclamation point in a yellow equilateral triangle with a black
23 outline to the left of the word "WARNING:" in bold all capital letters, followed by the
24 statement "This product can expose you to chemicals including di(2-ethylhexyl)phthalate,
25 which is known to the State of California to cause cancer and birth defects or other
26 reproductive harm. For more information, go to www.P65Warnings.ca.gov"; or (2) a
27 warning consisting of a symbol that is a black exclamation point in a yellow equilateral
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1 triangle with a black outline to the left of the word “**WARNING:**” in bold all capital letters,
2 followed by the statement “Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”¹
3 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section
4 3.1(b)(1) or (2) shall be used.

5 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
6 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
7 automatic process, providing that the warning is displayed with such conspicuousness, as compared
8 with other words, statements, or designs as to render it likely to be read and understood by an
9 ordinary individual under customary conditions of purchase or use. A warning may be contained
10 in the same section of the packaging, labeling, or instruction booklet that states other safety
11 warnings, if any, concerning the use of the product and shall be at least the same size as those other
12 safety warnings.

13 **4. MONETARY TERMS**

14 4.1 **Civil Penalty.** ADJ shall pay \$3,000.00 as a Civil Penalty of pursuant to Health and
15 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
16 Code § 25192, with 75% of these funds remitted to the State of California’s Office of
17 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty
18 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

19 4.1.1 Within ten (10) days of the date this Agreement is entered as a Judgment
20 by the Court, ADJ shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA”
21 in the amount of \$2,250.00; and (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount
22 of \$750.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following
23 payment address:

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

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 including yellow for purposes of other language,
symbols or designs.

1 Bala Cynwyd, PA 19004
2 esmith@brodskysmith.com

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

5 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

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

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

19 4.2 **Attorneys' Fees.** Within ten (10) days of the date this Agreement is entered as a
20 Judgment by the Court, ADJ shall pay \$21,000.00 to Brodsky & Smith, LLC ("Brodsky Smith")
21 as complete reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of
22 investigating, bringing this matter to ADJ's attention, litigating and negotiating and obtaining
23 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section
24 1021.5.

25 **5. RELEASE OF ALL CLAIMS**

26 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
27 acting on his own behalf, and on behalf of the public interest, and ADJ, and its parents,
28 shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, 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

1 retailers, franchisees, and cooperative members, including but not limited to Fry's Electronics, Inc.
2 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
3 DEHP from Covered Products as set forth in the Notice, with respect to any Covered Products
4 manufactured, distributed, or sold by ADJ prior to the Effective Date. This Consent Judgment shall
5 have preclusive effect such that no other person or entity, whether purporting to act in his, her, or
6 its interests or the public interest shall be permitted to pursue and/or take any action with respect to
7 any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought
8 pursuant to the Notice against ADJ or its Downstream Releasees of the Product including but not
9 limited to ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment
10 constitutes compliance with Proposition 65 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 ADJ, Defendant Releasees, and Downstream Releasees from any and all
15 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
16 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
17 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
18 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
19 Products manufactured, distributed, or sold by ADJ, Defendant Releasees or Downstream
20 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
21 specifically waives any and all rights and benefits which he now has, or in the future may have,
22 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides
23 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 ADJ 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 Joshua A. Schaul
24 Sherman IP LLP
25 1519 26th Street
26 Santa Monica, CA 90404

26 And

27 For Ferreiro:

28 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**
APPROVAL

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

14 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
15 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
16 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
17 30 days, the case shall proceed on its normal course.

18 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
19 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
20 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
21 its normal course on the trial court's calendar.

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. ATTORNEY'S FEES**

26 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
27 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.
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12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

14.1 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 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: 7/31/18

Date: 7/20/18

By: Anthony Ferreiro
ANTHONY FERREIRO

By: [Signature]
ADI PRODUCTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 09-20-2018

[Signature]
Judge of Superior Court