

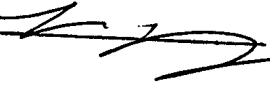


14106265

FILED
ALAMEDA COUNTY

AUG 16 2019

CLERK OF THE SUPERIOR COURT

By  Deputy

Courtesy Copy

JUN 28 2019

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH, LLC.
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160
7
8 *Attorneys for Plaintiff*

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

10 ANTHONY FERREIRO,
11 Plaintiff,
12 v.
13 DICK'S SPORTING GOODS, INC.,
14 Defendant.

Case No.: RG18920753
CONSENT JUDGMENT
Judge: Winifred Y. Smith
Dept.: 21
Hearing Date: August 16, 2019
Hearing Time: 11:00 AM
Reservation #: R-2090321

COPY
BY FAX

15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Dick’s Sporting Goods,
4 Inc. (“Dick’s Sporting Goods” or “Defendant”) with Ferreiro and Defendant collectively referred
5 to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California
6 that seeks to promote awareness of exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in consumer products. Dick’s Sporting
8 Goods 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 Field & Stream tackle bags without
12 providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed under
13 Proposition 65 as a chemical known to the State of California to cause cancer. Defendant denies
14 such allegations.

15 **1.3 Notice of Violation/Complaint.** On or about March 26, 2018, Ferreiro served
16 Dick’s Sporting Goods, and various public enforcement agencies with documents entitled “60-Day
17 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
18 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Field &
19 Stream tackle bags expose users in California to DINP. To the knowledge of the parties, no public
20 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On September
21 14, 2018, Ferreiro filed a complaint (the “Complaint”) in the matter.

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.
28

1 1.5 Defendant denies the allegations contained in Ferreiro’s Notice and Complaint and
2 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Field & Stream tackle
10 bags, UPC No. 889751 11297 8 that are manufactured, distributed and/or offered for sale in
11 California by Dick’s Sporting Goods.

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 **Reformulation of Covered Products.** As of the date this Consent Judgment is
16 signed by both Parties, and continuing thereafter, Covered Products that Dick’s Sporting Goods
17 directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
18 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
20 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to or be required for
22 any Reformulated Product.

23 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of DINP when
25 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
26 8270C or other methodology utilized by federal or state government agencies for the purpose of
27 determining the phthalate content in a solid substance.

1 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
3 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
4 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
7 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

8 (a) **Warning.** The “Warning” shall consist of the statement:

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

12 (b) **Alternative Warning:** Dick’s Sporting Goods may, but is not required to, use the
13 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

15 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
21 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
22 automatic process, providing that the warning is displayed with such conspicuousness, as compared
23 with other words, statements, or designs as to render it likely to be read and understood by an
24 ordinary individual under customary conditions of purchase or use. A warning may be contained
25 in the same section of the packaging, labeling, or instruction booklet that states other safety
26 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
27 those other safety warnings.
28

1 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
2 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
3 Judgment or by complying with warning requirements adopted by the State of California's Office
4 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

5 **4. MONETARY TERMS**

6 4.1 **Civil Penalty.** Dick's Sporting Goods shall pay \$2,000.00 as a Civil Penalty
7 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
8 California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the
9 remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety
10 Code § 25249.12(d).

11 4.1.1 Within ten (10) days of the Effective Date, Dick's Sporting Goods shall
12 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
13 \$1,500.00; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00.
14 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
15 address:

16 Evan J. Smith, Esquire
17 Brodsky & Smith, LLC
18 Two Bala Plaza, Suite 510
19 Bala Cynwyd, PA 19004

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

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

 Mike Gyurics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street

1 Sacramento, CA 95814

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

4 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Dick's Sporting Goods
5 shall pay \$19,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
6 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
7 Dick's Sporting Goods' attention, litigating and negotiating and obtaining judicial approval of a
8 settlement in the public interest, pursuant to Code of Civil Procedure § 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 Dick's Sporting Goods, and its
12 parents, 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 ("Downstream Releasees"), of all claims for
18 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
19 Notice, with respect to any Covered Products manufactured, distributed, or sold by Dick's Sporting
20 Goods prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no
21 other person or entity, whether purporting to act in his, her, or its interests or the public interest
22 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65
23 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against
24 Dick's Sporting Goods and/or the Downstream Releasees of the Covered Products ("Proposition
25 65 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
26 Proposition 65 with regard to the Covered Products.

27 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
28 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative

1 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action and releases Dick's Sporting Goods, Defendant Releasees, and Downstream Releasees
3 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
4 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
5 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
6 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
7 from Covered Products manufactured, distributed, or sold by Dick's Sporting Goods, Defendant
8 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this
9 paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or
10 in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code,
11 which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
15 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
16 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
17 DEBTOR OR RELEASED PARTY.

18 5.3 Dick's Sporting Goods waives any and all claims against Ferreiro, his attorneys and
19 other representatives, for any and all actions taken or statements made (or those that could have
20 been taken or made) by Ferreiro and his attorneys and other representatives, whether in the course
21 of 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 7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
California and apply within the State of California. In the event that Proposition 65 is repealed or

1 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
2 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
3 to the extent that, Covered Products are so affected.

4 **8. NOTICES**

5 8.1 Unless specified herein, all correspondence and notices required to be provided
6 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
7 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
8 by the other party at the following addresses:

9 For Defendant:

10 Todd O. Maiden
11 Reed Smith LLP
12 101 Second Street
13 Suite 1800
14 San Francisco, CA 94105-3659

15 And

16 For Ferreiro:

17 Evan Smith
18 Brodsky & Smith, LLC
19 9595 Wilshire Blvd., Ste. 900
20 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.

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

28 **APPROVAL**

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

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
3 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
4 30 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

15 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
16 pursuant to law.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 **14. AUTHORIZATION**

21 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
22 respective Parties and have read, understood and agree to all of the terms and conditions of this
23 document and certify that he or she is fully authorized by the Party he or she represents to execute
24 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
25 explicitly provided herein each Party is to bear its own fees and costs.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

AGREED TO:

Date: 6/27/19

Date: June 20, 2019

By: Anthony Ferreiro
ANTHONY FERREIRO

By: Genevieve K. Kwan
DICK'S SPORTING GOODS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: August 16, 2019

Wesley J. Smith
Judge of Superior Court