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**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 02 2019

By Shanika Monroe

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 BLACK DIAMOND INTERNATIONAL
15 FOREST GROUP, LLC, et al.,

16 Defendant.

Case No.: RG18916367

CONSENT JUDGMENT

Judge: Sandra K. Bean

Dept.: 110

Hearing Date: January 30, 2019

Hearing Time: 2:30 PM

Reservation #: R-2028780

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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 True Value Company, L.L.C. (“True Value” 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. True Value 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 carbon monoxide from its sales of Black Diamond fire starters without providing a clear and reasonable exposure warning pursuant to Proposition 65. Carbon monoxide is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about April 27, 2018, Ferreiro served True Value, 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 violated Proposition 65 for failing to warn consumers and customers that use of Black Diamond fire starters expose users in California to carbon monoxide. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On August 13, 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 Black Diamond fire
10 starters and related Black Diamond products that are manufactured, distributed and/or offered for
11 sale in California by True Value.

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: STOP-SALE**

15 3.1 **True Value will stop selling the Covered Products.** As of the date this Consent
16 Judgment is signed by both Parties, and continuing thereafter, Covered Products will no longer be
17 manufactured, imported, distributed, sold or offered for sale by True Value in California.

18 **4. MONETARY TERMS**

19 4.1 **Civil Penalty.** True Value shall pay One Thousand and Five Hundred and xx/100
20 Dollars (\$1,500.00) as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to
21 be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
22 funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Ferreiro, as
23 provided by California Health & Safety Code § 25249.12(d).

24 4.1.1 Within thirty (30) days of the Effective Date, True Value shall issue two
25 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and
26 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$375.00. Payment owed to
27 Ferreiro pursuant to this Section shall be delivered to the following payment address:
28

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 address
20 set forth above as proof of payment to OEHHA.

21 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, True Value shall pay
22 \$16,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's
23 attorneys' fees and costs incurred as a result of investigating, bringing this matter to True Value's
24 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
25 interest, pursuant to Code of Civil Procedure § 1021.5.

26 **5. RELEASE OF ALL CLAIMS**

27 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
28 acting on his own behalf, and on behalf of the public interest, and True Value, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, cooperative members
and wholesale customers, 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.

1 distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative
2 members, wholesale customers ("Downstream Releasees"), of all claims for violations of
3 Proposition 65 based on exposure to carbon monoxide from Covered Products as set forth in the
4 Notice, with respect to any Covered Products manufactured, distributed, or sold by True Value
5 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other
6 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
7 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
8 alleged in the Complaint, or that could have been brought pursuant to the Notice against True Value
9 and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims"). Compliance
10 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to
11 the Covered Products.

12 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
13 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
14 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
15 legal action and releases True Value, Defendant Releasees, and Downstream Releasees from any
16 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
17 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
18 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
19 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
20 from Covered Products manufactured, distributed, or sold by True Value. Defendant Releasees or
21 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
22 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
23 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
24 provides as follows:

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

1 5.3 True Value 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 John C. Hammerle
24 c/o True Value Company, L.L.C.
25 Retail Support Center
26 8600 W. Bryn Mawr Ave.
27 Chicago, IL 60631

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

13 **AGREED TO:**

AGREED TO:

14 Date: 12/7/18

Date: 11/27/18

15 By: Anthony Ferreira
16 ANTHONY FERREIRO

By: John C. Hamel
TRUE VALUE COMPANY, L.L.C.

17
18
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20 Dated: 5/2/19

[Signature]
21 Judge of Superior Court