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Evan Smith (Bar No. SBN 242352)
BRODSKY & SMITH, LLC.
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212
Tel: (877) 534-2590
Fax: (310) 247-0160

Attorneys for Plaintiff

RECEIVED
ALAMEDA COUNTY

JUN - 4 2019

FILED

CLERK OF THE SUPERIOR COURT ALAMEDA COUNTY

By ALICIA ESPINOZA Deputy **JUL 25 2019**

CLERK OF THE SUPERIOR COURT

By *Corinne Salazar* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

HELLY HANSEN (US), INC.,

Defendant.

Case No.: RG19018172

CONSENT JUDGMENT

Judge: Julia Spain

Dept.: 520

Hearing Date: July 25, 2019

Hearing Time: 2:00 PM

Reservation #: R-2081924

Filed By Fax

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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 Helly Hansen (US), Inc. ("Helly Hansen" 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. Helly Hansen 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 its sales of Helly Hansen work clothing without providing a clear and reasonable exposure warning pursuant to 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 August 7, 2018, Ferreiro served Helly Hansen, 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 Helly Hansen work pants expose users in California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On April 25, 2019, 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 the Notice and Complaint
2 and 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 Helly Hansen PVC work
10 clothing that is manufactured, distributed and/or offered for sale in California by Helly Hansen.

11 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: WARNINGS**

14 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
15 signed by both Parties, and continuing thereafter, Covered Products that Helly Hansen directly
16 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
17 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
18 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
19 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
20 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
21 Product.

22 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of DINP when
24 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
25 8270C or other methodology utilized by federal or state government agencies for the purpose of
26 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:** Helly Hansen may, but is not required to, use the alternative
13 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.
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1 If Helly Hansen sells Covered Products via an internet website to customers located in
2 California, the warning requirements of this section shall be satisfied if the foregoing warning
3 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
4 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
5 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
6 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
7 to or immediately following the display, description, price, or checkout listing of the Covered
8 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
9 associates it with the product(s) to which the warning applies.

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

14 **4. MONETARY TERMS**

15 4.1 **Civil Penalty.** Helly Hansen shall pay \$1,500.00 as a Civil Penalty pursuant to
16 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
17 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
18 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the Civil Penalty
19 remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

20 4.1.1 Within ten (10) days of the Effective Date, Helly Hansen shall issue two
21 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and
22 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$375.00. Payment owed to
23 Ferreiro pursuant to this Section shall be delivered to the following payment address:

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

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For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Helly Hansen shall pay \$16,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to Helly Hansen's attention, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure §1021.5.

5. **RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro acting on his own behalf, and on behalf of the public interest, and Helly Hansen, and its parents, 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 retailers, franchisees, and cooperative members, including but not limited to Sierra Trading Post, Inc. ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by Helly Hansen prior to the Effective Date. This Consent

1 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
2 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
3 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
4 been brought pursuant to the Notice against Helly Hansen or its Downstream Releasees of the
5 Product including but not limited to ("Proposition 65 Claims"). Compliance with the terms of this
6 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

7 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
8 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
9 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
10 legal action and releases Helly Hansen, Defendant Releasees, and Downstream Releasees from any
11 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
12 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
13 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
14 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
15 from Covered Products manufactured, distributed, or sold by Helly Hansen, Defendant Releasees
16 or Downstream Releasees. With respect to the foregoing waivers and releases in this Section,
17 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
18 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
19 provides as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
21 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
23 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
24 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
25 DEBTOR OR RELEASED PARTY.

26 5.3 Helly Hansen waives any and all claims against Ferreiro, his attorneys and other
27 representatives, for any and all actions taken or statements made (or those that could have been
28 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
and/or with respect to Covered Products.

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6. ENFORCEMENT

6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides sixty (60) days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good faith manner.

6.2 **Notice of Violation.** Prior to bringing any proceeding to enforce the terms of this Consent Judgment, Ferreiro shall provide a written notice of violation ("NOV") to Helly Hansen that includes information sufficient for Helly Hansen to be able to understand and correct the violation, including but not limited to: (a) the name of the product, (b) specific dates when the product was sold in California, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice, including all test data obtained by Ferreiro regarding the Covered Product.

6.3 **Notice of Election Response.** Within thirty (30) days of receiving an NOV, Helly Hansen shall serve a Notice of Election ("NOE") either contesting or not contesting the NOV.

6.2.1 **Non-Contested NOV.** Ferreiro shall take no further action regarding the alleged violation if Helly Hansen serves a NOE that elects not to contest the NOV and meets one of the following conditions:

(a) The Covered Product was shipped by Helly Hansen for sale in California before the Effective Date, or

(b) Since receiving the NOV Helly Hansen has taken corrective action by either (i) taking all steps necessary to bring the sale of the product into compliance under the terms of this Consent Judgment, or (ii) requesting that its customers in California remove the Covered Products identified in the NOV from sale in California and destroy or return the Covered Products to Helly Hansen, or (iii) refute the information provided in § 6.2.

1 6.2.2 **Contested NOV.** If Helly Hansen serves a NOE electing to contest the
2 NOV, the provisions of this § 6.2.2 shall apply.

3 (a) Helly Hansen may request that the sample(s) of Covered Products
4 tested by Ferreiro be subject to confirmatory testing at an EPA or California-
5 accredited laboratory.

6 (b) If the confirmatory testing establishes that the Covered Products do
7 not contain DINP in excess of the levels allowed in § 3.2**Error! Reference source**
8 **not found.**, above, Ferreiro shall take no further action regarding the alleged
9 violation. If the testing does not establish compliance with § 3.2**Error! Reference**
10 **source not found.**, above, Helly Hansen may withdraw its NOE to contest the
11 violation and may serve a new NOE pursuant to § 6.2.1.

12 (c) If Helly Hansen does not withdraw an NOE to contest the NOV or
13 take action under § 6.2.1, above, the Parties shall meet and confer for a period of no
14 less than 30 days before Ferreiro may take action seeking to enforce the terms of
15 this Consent Judgment.

16 6.4 In any proceeding brought by either Party to enforce this Consent Judgment, the
17 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

18 **7. INTEGRATION**

19 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and
20 any and all prior negotiations and understandings related hereto shall be deemed to have been
21 merged within it. No representations or terms of agreement other than those contained herein exist
22 or have been made by any Party with respect to the other Party or the subject matter hereof.

23 **8. GOVERNING LAW**

24 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
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1 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
2 to the extent that, Covered Products are so affected.

3 **9. NOTICES**

4 9.1 Unless specified herein, all correspondence and notices required to be provided
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
6 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
7 by the other party at the following addresses:

8 For Defendant:

9 Jeffrey Margulies
10 Norton Rose Fulbright US LLP
11 555 South Flower Street
12 Forty-First Floor
13 Los Angeles, CA 90071

14 And

15 For Ferreiro:

16 Evan Smith
17 Brodsky & Smith, LLC
18 9595 Wilshire Blvd., Ste. 900
19 Beverly Hills, CA 90212

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

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

23 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

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

28 11.1 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 11.2 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 11.3 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 **12. MODIFICATION**

10 12.1 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 **13. ATTORNEY'S FEES**

13 13.1 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 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
16 pursuant to law.

17 **14. RETENTION OF JURISDICTION**

18 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 **15. AUTHORIZATION**

21 15.1 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.
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AGREED TO:

AGREED TO:

Date: 6/17/19

Date: 4/24/2019

By: Anthony Ferreiro
ANTHONY FERREIRO

By: Debra Hoyer
HELLY HANSEN (US), INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 7/25/19

Julia Spain
Judge of Superior Court

JULIA A. SPAIN

EXHIBIT A [NON-EXCLUSIVE LIST OF COVERED PRODUCTS]

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- BM17WB5PBAG Helly Hansen Wild Blackberry & Apple 5 Piece Bag Set
- BM17MP5PBAG Helly Hansen Midnight Fig & Pomegranate 5 Piece Bag Set
- BM17JO5PBAG Helly Hansen Jojoba Silk & Almond Oil 5 Piece Bag Set
- BM17WBBAGLUX Helly Hansen Wild Blackberry & Apple Luxury Bag Set
- BM17MGBAGLUX Helly Hansen Sweet Mandarin & Grapefruit Luxury Bag Set
- BM17JOBAGLUX Helly Hansen Jojoba Silk & Almond Oil Luxury Bag Set
- BM17MPBAGLUX Helly Hansen Midnight Fig & Pomegranate Luxury Bag Set
- BCR17MINIBAGSET Helly Hansen Beauticolgy Record Mini Bagset
- FC174PMBAG Helly Hansen Floral Collection 4 Piece Mesh Bag Set
- RB174PMBAG Helly Hansen Royale Bouquet 4 Piece Mesh Bag Set

Case Title: Ferreiro v. Helly Hansen Inc.
Case No. RG19-018172

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 24405 Amador Street, Hayward, California. I served the CONSENT JUDGMENT by placing copies in envelopes addressed as shown below and sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Smith, Evan J.
Brodsky & Smith LLC
9595 Wishre Blvd. Ste. 900
Beverly Hills, CA 90212

Margulies, Jeffrey B.
Norton Rose Fulbright US LLP
555 South Flower Street 41st Fl.
Los Angeles, CA 90071

Dated: 07/25/2019

Chad Finke
Executive Officer/Clerk of the Superior Court

By: *Danielle Labrecque*
Danielle Labrecque, Deputy Clerk