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Attorneys for Plaintiff

FILED  
ALAMEDA COUNTY  
SEP 23 2020

CLERK OF THE SUPERIOR COURT  
By *Michelle Hawkins* Deputy

FILED  
ALAMEDA COUNTY

AUG 06 2020

CLERK OF THE SUPERIOR COURT  
By *Elia Romero* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ANTHONY FERREIRO,  
Plaintiff,

v.

BIG 5, CORP., MAX SALES GROUP, INC.,  
Defendant.

Case No.: RG19014618

CONSENT JUDGMENT

Judge: Richard L. Seabolt  
Dept.: 521  
Hearing Date: September 23, 2020  
Hearing Time: 1:30 PM  
Reservation #: R-2183464

FILE BY FAX

AUG 06 2020

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 Max Sales Group, Inc.  
4           ("Max Sales" or "Defendant") with Ferreiro and Defendant collectively referred to as the "Parties"  
5           and 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. Max Sales is alleged to be a person in the  
8           course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et  
9           seq.

10           **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11           individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Fine Life money clips and card  
12           holders without providing a clear and reasonable exposure warning pursuant to Proposition 65.  
13           DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer  
14           and reproductive toxicity.

15           **1.3 Notice of Violation/Complaint.** On or about November 28, 2018, Ferreiro served  
16           Max Sales, Big 5, Corp. ("Big 5"), and various public enforcement agencies with documents  
17           entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the  
18           "Notice"), alleging that Max Sales and Big 5 violated Proposition 65 for failing to warn consumers  
19           and customers that use of Fine Life money clips and card holders expose users in California to  
20           DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the  
21           Notice. On April 11, 2019, Ferreiro filed a complaint (the "Complaint") in the matter against Big  
22           5. On July 17, 2020, Ferreiro filed a first amended complaint (the "Amended Complaint") in order  
23           to name Max Sales as a defendant. The Complaint and Amended Complaint are collectively  
24           referred to herein as, the "Action."

25           **1.4** 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 Action, that venue is proper in the  
27           County of Alameda, and that this Court has jurisdiction to approve, enter, and oversee the  
28

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

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

11 **2. DEFINITIONS**

12 2.1 **Covered Products.** The term "Covered Products" means Fine Life money clips and  
13 card holders that are manufactured, distributed and/or offered for sale in California by Max Sales.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF WARNINGS**

17 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is  
18 signed by both Parties, and continuing thereafter, Covered Products that Max Sales directly  
19 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
20 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
21 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
22 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §  
23 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
24 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 DEHP  
27 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
28

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

3       **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
4 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
5 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,  
6 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There  
7 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream  
8 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall  
9 consist of either the **Warning** or **Alternative Warning** 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 di(2-  
12 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
13 cancer and birth defects or other reproductive harm. For more information go to  
14 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15       (b) **Alternative Warning:** Max Sales may, but is not required to, use the alternative  
16 short-form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

17       ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

1 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
2 those other safety warnings.

3 If Max Sales sells Covered Products via an internet website to customers located in  
4 California, the warning requirements of this section shall be satisfied if the foregoing warning  
5 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;  
6 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages  
7 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol  
8 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent  
9 to or immediately following the display, description, price, or checkout listing of the Covered  
10 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly  
11 associates it with the product(s) to which the warning applies.

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

16 **4. MONETARY TERMS**

17 **4.1 Civil Penalty.** Max Sales shall pay \$2,500.00 as a Civil Penalty pursuant to Health  
18 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
19 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
20 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

21 **4.1.1** Within ten (10) days of the Effective Date, Max Sales shall issue two  
22 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,875.00; and  
23 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$625.00. Payment owed to  
24 Ferreiro pursuant to this Section shall be delivered to the following payment address:

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

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

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

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

17 4.2 Attorneys' Fees. Within ten (10) days of the Effective Date, Max Sales shall pay  
18 \$22,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's  
19 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Max Sales  
20 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
21 interest, pursuant to Code of Civil Procedure § 1021.5.

22 5. RELEASE OF ALL CLAIMS

23 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
24 acting on his own behalf, and on behalf of the public interest, and Max Sales, and its parents,  
25 shareholders, members, directors, officers, managers, employees, representatives, agents,  
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
28 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 ("Downstream Releasees"), of all claims for  
violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
2 and/or with respect to Covered Products.

3 6. INTEGRATION

4 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
5 any and all prior negotiations and understandings related hereto shall be deemed to have been  
6 merged within it. No representations or terms of agreement other than those contained herein exist  
7 or have been made by any Party with respect to the other Party or the subject matter hereof.

8 7. GOVERNING LAW

9 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
10 California and apply within the State of California. In the event that Proposition 65 is repealed or  
11 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
13 to the extent that, Covered Products are so affected.

14 8. NOTICES

15 8.1 Unless specified herein, all correspondence and notices required to be provided  
16 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
17 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
18 by the other party at the following addresses:

19 For Defendant:

20 Steve Haney  
21 Haney & Young LLP  
22 1055 W. 7th Street, Suite 1950  
Los Angeles, CA 90017

23 And

24 For Ferreiro:

25 Evan Smith  
26 Brodsky & Smith, LLC  
27 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

28 Any party, from time to time, may specify in writing to the other party a change of address to

1 which all notices and other communications shall be sent.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

3 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
4 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
5 the same document.

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

8 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
9 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
10 Defendant agrees it shall support approval of such Motion.

11 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
12 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
13 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
14 days, the case shall proceed on its normal course:

15 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
16 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
17 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
18 its normal course on the trial court's calendar.

19 **11. MODIFICATION**

20 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
21 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

22 **12. ATTORNEY'S FEES**

23 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
24 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

25 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
26 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: March 18, 2020

Date: 17 MAR 20

By: Anthony Ferreira  
ANTHONY FERREIRO

By: Sam Henry  
MAX SALES GROUP, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: SEP 23 2020

Daniel C. Salvetti  
Judge of Superior Court