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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  
DEC 24 2019  
CLERK OF THE SUPERIOR COURT  
**FILED**  
ALAMEDA COUNTY  
FEB 21 2020  
CLERK OF THE SUPERIOR COURT  
By Dennis Hayashi  
Deputy  
**AMRIT KHAN**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ANTHONY FERREIRO,  
  
Plaintiff,  
  
v.  
  
PACIFIC CYCLE, LLC,  
  
Defendant.

Case No.: RG19034796  
  
**CONSENT JUDGMENT**  
  
Judge: Dennis Hayashi  
Dept.: 518  
Hearing Date: February 19, 2020  
Hearing Time: 2:30 PM  
Reservation #: R-2128194

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 Pacific Cycle, LLC  
4 ("Pacific Cycle" or "Defendant") with Ferreiro and Defendant collectively referred to as the  
5 "Parties" and each of them as a "Party." Ferreiro is an individual residing in California that seeks  
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or  
7 eliminating hazardous substances contained in consumer products. Pacific Cycle is alleged to be a  
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
9 §§ 25249.6 et 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 Mongoose storage hooks without  
12 providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed  
13 under Proposition 65 as a chemical known to the State of California to cause cancer and  
14 reproductive toxicity.

15           **1.3 Notice of Violation/Complaint.** On or about June 5, 2019, Ferreiro served Pacific  
16 Cycle, and various public enforcement agencies with documents entitled "60-Day Notice of  
17 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Defendant  
18 violated Proposition 65 for failing to warn consumers and customers that use of Mongoose storage  
19 hooks expose users in California to DEHP. No public enforcer has brought and is diligently  
20 prosecuting the claims alleged in the Notice. On September 12, 2019, Ferreiro filed a complaint  
21 (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 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 Mongoose bike storage  
10 hooks that are manufactured, distributed and/or offered for sale in California by Pacific Cycle.

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 Effective Date of this Consent  
15 Judgment, and continuing thereafter, Covered Products that Pacific Cycle directly manufactures,  
16 imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products  
17 pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant  
18 to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a  
19 Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning  
20 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product. Covered  
21 Products manufactured prior to the Effective Date do not need to be reformulated in order to be  
22 imported, distributed, sold, or offered for sale, even if a warning is not provided pursuant to §§ 3.3  
23 and 3.4 or otherwise.

24           3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products  
25 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP  
26 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
27  
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 or any Downstream Releasees (*see* § 5.1) to provide a warning  
8 for Covered Products that enter the stream of commerce prior to the date this Consent Judgment is  
9 signed by both Parties. The warning shall consist of either the **Warning** or **Alternative Warning**  
10 described in §§ 3.3(a) or (b), respectively:

11       (a) **Warning.** The "Warning" shall consist of the statement:

12       ⚠ **WARNING:** This product can expose you to chemicals including di(2-  
13 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
14 cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15       (b) **Alternative Warning:** Pacific Cycle 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 Pacific Cycle 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.** Pacific Cycle shall pay \$2,000.00 as a Civil Penalty pursuant to  
18 Health 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  
20 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
21 § 25249.12(d).

22 **4.1.1** Within ten (10) days of the Effective Date, Pacific Cycle shall issue two  
23 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and  
24 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500.00. Payment owed to  
25 Ferreiro pursuant to this Section shall be delivered to the following payment address:

26 Evan J. Smith, Esquire  
27 Brodsky & Smith, LLC  
28 Two Bala Plaza, Suite 510  
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, Pacific Cycle shall pay  
18 \$21,500.00 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 Pacific Cycle's  
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 Pacific Cycle, 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, including but not limited to Sierra Trading Post,  
Inc. ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to

1 DEHP from Covered Products as set forth in the Notice, with respect to any Covered Products  
2 manufactured, distributed, or sold by Pacific Cycle prior to the Effective Date. This Consent  
3 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act  
4 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action  
5 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have  
6 been brought pursuant to the Notice against Pacific Cycle and/or the Downstream Releasees of the  
7 Covered Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment  
8 constitutes compliance with Proposition 65 with regard to the Covered Products.

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

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

28         5.3 Pacific Cycle waives any and all claims against Ferreiro, his attorneys and other  
representatives, for any and all actions taken or statements made (or those that could have been  
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.

**6. INTEGRATION**

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

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

**8. NOTICES**

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

For Defendant:

Jean-Paul Cart  
Schiff Hardin LLP  
4 Embarcadero Center, Suite 1350  
San Francisco, CA 94111

And

For Ferreiro:

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

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.

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
6 respective Parties and have read, understood and agree to all of the terms and conditions of this  
7 document and certify that he or she is fully authorized by the Party he or she represents to execute  
8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
9 explicitly provided herein each Party is to bear its own fees and costs.

10  
11 **AGREED TO:**

**AGREED TO:**

12  
13 Date: 12/12/19

Date: 10/7/19

14 By: Anthony Ferreiro

ANTHONY FERREIRO

By: Charrise Fraccascia

PACIFIC CYCLE, LLC

15  
16  
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18  
19 Dated: 2/20/20

D. - M.  
Judge of Superior Court

## HAYWARD HALL OF JUSTICE

Case # RG19-034796 Case Name Ferreiro V Pacific Cycle

### DECLARATION OF SERVICE BY MAIL (C.C.P. 1013A (1), 2015.5)

My business address is 24405 Amador Street, Hayward, California 94544. I am, and was at the time the herein mentioned mailing took place, a citizen of the United States, employed in the County where said mailing occurred, over the age of eighteen years and not a party to the above entitled cause.


On February 21, 2020 I served the foregoing document by depositing a copy thereof, enclosed in a separate, sealed envelope, with the postage thereon fully prepaid, in the United States mail box at Hayward, County of Alameda, California, each of which envelopes was addressed respectively as follows:

Evan J. Smith  
Brodsky & Smith LLC  
9595 Wilshire Blvd., Suite 900  
Beverly Hills, CA 90212

Jean-Paul P. Cart  
Schiff Hardin LLP  
4 Embarcadero Center, Suite 1350  
San Francisco, CA 94111

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 21, 2020, at Hayward, California.

  
\_\_\_\_\_  
(Signature of Declarant)