



24050088

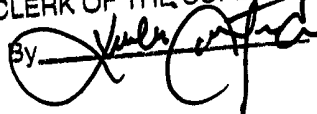
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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*

**FILED**  
ALAMEDA COUNTY

JUL 08 2021

CLERK OF THE SUPERIOR COURT  
By:  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ANTHONY FERREIRO,  
Plaintiff,

v.

FRICK PAPER COMPANY D/B/A PAPER  
MART, LLC,  
Defendant.

Case No.: RG20074696

**CONSENT JUDGMENT**

Judge: Jeffrey Brand  
Dept.: 22  
Hearing Date: December 15, 2020  
Hearing Time: 2:30 PM  
Reservation #: R-2215378

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 Frick Paper Company  
4           d/b/a Paper Mart, LLC (“Frick Paper” or “Defendant”), with Ferreiro and Defendant collectively  
5           referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in  
6           California that seeks to promote awareness of exposures to toxic chemicals and improve human  
7           health by reducing or eliminating hazardous substances contained in consumer products. Frick  
8           Paper is alleged to be a person in the course of doing business for purposes of the Safe Drinking  
9           Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code §§ 25249.6 et seq.  
10          (“Proposition 65”).

11          1.2     **Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
12          individuals to di(2-ethylhexyl) phthalate (DEHP) from its import, manufacture, distribution, and/or  
13          sales of vinyl zipper bags/pouches/cases in the State of California without providing a clear and  
14          reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a  
15          chemical known to the State of California to cause cancer and reproductive toxicity.

16          1.3     **Notice of Violation/Complaint.** On or about September 13, 2019, Ferreiro served  
17          Frick Paper and various public enforcement agencies with documents entitled “60-Day Notice of  
18          Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant  
19          violated Proposition 65 for failing to warn consumers and customers that use of the Covered  
20          Products exposes users in California to DEHP. To the best of the Parties’ knowledge, no public  
21          enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On September  
22          10, 2020, Ferreiro filed a complaint (the “Complaint”) in this matter.

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

1 and/or in the Notice.

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

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means vinyl zipper  
12 bags/pouches/cases that are manufactured, distributed, imported, sold and/or offered for sale in  
13 California by Frick Paper.

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.** Commencing ninety (90) days after the  
18 Effective Date, and continuing thereafter, Covered Products that Frick Paper directly manufactures,  
19 imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products  
20 pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant  
21 to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a  
22 Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning  
23 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

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.** Commencing ninety (90) days after the Effective  
4 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3  
5 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports,  
6 distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be  
7 no obligation for Defendant to provide a warning for Covered Products that enter the stream of  
8 commerce up to and through ninety (90) days after the Effective Date. The warning shall consist  
9 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 are known to the State of California to cause  
13 cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

14           (b) **Alternative Warning:** Frick Paper may, but is not required to, use the alternative  
15 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

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

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 Frick Paper sells Covered Products via an internet website to customers located in  
4 California, the foregoing warning requirements shall be provided by including either the warning  
5 or a clearly marked hyperlink using the word "WARNING" on the product display page, or by  
6 otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

7 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
8 compliance with the warning requirements of this Consent Judgment by either adhering to §§ 3.3  
9 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the State  
10 of California's Office of Environmental Health Hazard Assessment ("OEHHA") as of or after the  
11 Effective Date.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** Frick Paper shall pay \$2,500.00 as a Civil Penalty pursuant to Health  
14 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
15 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
16 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

17 **4.1.1** Within ten (10) days of the Effective Date, Frick Paper shall issue two  
18 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,875.00; and  
19 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$625.00. Payment owed to  
20 Ferreiro pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire  
22 Brodsky & Smith, LLC  
23 Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

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

26 For United States Postal Service Delivery:

27 Mike Gyurics  
28 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment

1 P.O. Box 4010  
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:

4 Mike Gyurics  
5 Fiscal Operations Branch Chief  
6 Office of Environmental Health Hazard Assessment  
7 1001 I Street  
8 Sacramento, CA 95814

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

11 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Frick Paper shall  
12 pay \$22,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for  
13 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to Frick  
14 Paper's attention, litigating and negotiating and obtaining judicial approval of a settlement in the  
15 public interest, pursuant to Code of Civil Procedure § 1021.5.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
18 acting on his own behalf, his past and current agents, representatives, attorneys, and successors  
19 and/or assignees, and on behalf of the public interest ("Releasers"), and Frick Paper, and its parents,  
20 shareholders, members, directors, officers, managers, employees, representatives, agents,  
21 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
22 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
23 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
24 not limited to manufacturers, suppliers, distributors, marketplace hosts, wholesalers, customers,  
25 licensors, licensees, retailers, franchisees, and cooperative members, including but not limited to  
26 Walmart Inc. ("Downstream Releasees"), of all claims for violations of Proposition 65 based on  
27 exposure to DEHP with respect to any Covered Products manufactured, distributed, imported,  
28 offered for sale and/or sold by Frick Paper prior to and through ninety (90) days after the Effective  
Date. This Consent Judgment shall have preclusive effect such that no other person or entity,  
whether purporting to act in his, her, or its interests or the public interest shall be permitted to

1 pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the  
2 Complaint, or that could have been brought pursuant to the Notice against Frick Paper, the  
3 Defendant Releasees and the Downstream Releasees of the Covered Products (“Proposition 65  
4 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with  
5 Proposition 65 with regard to the Covered Products.

6           5.2     In addition to the foregoing, Ferreiro, on behalf of himself and Releasors, his past  
7 and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his  
8 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,  
9 any form of legal action and releases Frick Paper, Defendant Releasees, and Downstream Releasees  
10 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,  
11 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
12 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
13 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
14 from Covered Products manufactured, distributed, imported, offered for sale and/or sold by Frick  
15 Paper, Defendant Releasees or Downstream Releasees.

16           5.3     With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby  
17 specifically waives any and all rights and benefits which he now has, or in the future may have,  
18 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
19 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           5.4     Frick Paper 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.

1           5.5     The Parties agree that compliance by Frick Paper with this Consent Judgment  
2 constitutes compliance with Proposition 65 with respect to alleged exposure to DEHP from use of  
3 the Covered Products.

4           **6.     INTEGRATION**

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

9           **7.     GOVERNING LAW**

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

15          **8.     NOTICES**

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

20 For Defendant:

21                 John Teeter  
22                 Paper Mart  
23                 2164 N. Batavia St.  
24                 Orange, CA 92865

25                 With copy to:

26                 Ann G. Grimaldi  
27                 Jennifer K. Singh  
28                 Grimaldi Law Offices  
                  75 Broadway Street, Suite 202  
                  San Francisco, CA 94111



1 And

2 For Ferreiro:

3 Evan Smith  
4 Brodsky & Smith, LLC  
5 9595 Wilshire Blvd., Ste. 900  
6 Beverly Hills, CA 90212

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
12 the same document.

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

15 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
16 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
17 Defendant agrees it shall reasonably support approval of such Motion.

18 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
19 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
20 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
21 days, the case shall proceed on its normal course.

22 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
23 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
24 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
25 its normal course on the trial court's calendar.

26 **11. MODIFICATION**

27 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
28 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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

**12. ATTORNEY'S FEES**

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.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions 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: Oct 8, 2020

Date: \_\_\_\_\_

By: Anthony Ferreira  
ANTHONY FERREIRO

By: \_\_\_\_\_  
FRICK PAPER COMPANY D/B/A  
PAPER MART, LLC

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
11 respective Parties and have read, understood and agree to all of the terms and conditions of this  
12 document and certify that he or she is fully authorized by the Party he or she represents to execute  
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

**AGREED TO:**

16  
17 Date: \_\_\_\_\_

Date: 9 October '20

18  
19 By: \_\_\_\_\_  
20 ANTHONY FERREIRO

By: 

PRICK PAPER COMPANY D/B/A  
PAPER MART, LLC

21  
22 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

23  
24 Dated: 7/8/21

  
Judge of Superior Court