

FILED

AUG 03 2021

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7 *Attorneys for Plaintiff*

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Berg, Deputy

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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 SELLMARK CORPORATION, TURNER'S
15 OUTDOORS, INC.,

16 Defendants.

Case No.: CIV2002079

**(PROPOSED) CONSENT
JUDGMENT**

Judge: Stephen P. Freccero
Dept.: A
Hearing Date:
Hearing Time: 1:30 PM

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 Sellmark Corporation,
4 a Texas corporation and Turner’s Outdoors, Inc., a California corporation (collectively
5 “Defendants”) with Ferreiro and Defendants collectively referred to as the “Parties” and each of
6 them as a “Party.” Ferreiro is an individual residing in California that seeks to promote awareness
7 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
8 substances contained in consumer products. Defendants are alleged to be a person in the course of
9 doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendants have exposed
11 individuals to diisononyl phthalate (DINP) from its sales of 12 Survivors vinyl gloves without
12 providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed under
13 Proposition 65 as a chemical known to the State of California to cause cancer.

14 **1.3 Notice of Violation/Complaint.** On or about November 11, 2019, Ferreiro served
15 Turner’s, and on or about November 8, 2019 served Sellmark and various public enforcement
16 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
17 §25249.7(d) (the “Notice”), alleging that Defendants violated Proposition 65 for failing to warn
18 consumers and customers that use of Spencer’s butterfly backpacks/bags expose users in California
19 to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
20 Notice. On August 6, 2020, Ferreiro filed a complaint (the “Complaint”) in the matter.

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendants as to the allegations contained in the Complaint filed in this matter,
23 that venue is proper in the County of Marin, and that this Court has jurisdiction to approve, enter,
24 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
25 claims which were or could have been raised in the Complaint based on the facts alleged therein
26 and/or in the Notice.

1 1.5 Defendants deny the material allegations contained in Ferreiro's Notice and
2 Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or
4 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
5 admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such
6 being specifically denied by Defendants. However, this section shall not diminish or otherwise
7 affect the obligations, responsibilities, and duties of Defendants under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means 12 Survivors vinyl gloves
10 that are manufactured, distributed by Sellmark Corporation and are offered for sale in California
11 by Turner's Outdoors, Inc.

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: COMMITMENT TO NOT SELL**

15 3.1 **Commitment to Not Sell.** Sellmark Corporation shall not distribute, and Turner's
16 Outdoors, Inc. shall not sell, or offer for sale the Covered Products in California after the Effective
17 Date.

18 **4. MONETARY TERMS**

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

24 4.1.1 Within ten (10) business days of the Effective Date, Defendants shall
25 collectively issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the
26 amount of \$1,125.00; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of
27
28

1 \$375.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following
2 payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith, LLC
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

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

8 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

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

18 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Defendants
19 shall collectively pay \$16,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete
20 reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing
21 this matter to Defendants' attention, litigating and negotiating and obtaining judicial approval of a
22 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
25 acting on his own behalf, and on behalf of the public interest, and Defendants, and their parents,
26 shareholders, members, directors, officers, managers, employees, representatives, agents,
27 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
28

1 predecessors, successors and assigns ("Defendants Releasees"), and all entities from whom they
2 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
3 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
4 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
5 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
6 Notice, with respect to any Covered Products manufactured, distributed, or sold by Defendants
7 prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall have
8 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
9 her, or its interests or the public interest shall be permitted to pursue and/or take any action with
10 respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
11 been brought pursuant to the Notice against Defendants and/or the Downstream Releasees of the
12 Covered Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment
13 constitutes compliance with Proposition 65 with regard to the Covered Products.

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

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 5.3 Defendants waive any and all claims against Ferreiro, his attorneys and other
6 representatives, for any and all actions taken or statements made (or those that could have been
7 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
9 and/or with respect to Covered Products.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
12 any and all prior negotiations and understandings related hereto shall be deemed to have been
13 merged within it. No representations or terms of agreement other than those contained herein exist
14 or have been made by any Party with respect to the other Party or the subject matter hereof.

15 **7. GOVERNING LAW**

16 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California and apply within the State of California. In the event that Proposition 65 is repealed or
18 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
19 Defendants shall have no further obligations pursuant to this Consent Judgment with respect to,
20 and to the extent that, Covered Products are so affected.

21 **8. NOTICES**

22 8.1 Unless specified herein, all correspondence and notices required to be provided
23 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
24 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
25 by the other party at the following addresses:

26 For Defendants:

27 For Turner's

28 W. Lee Smith
Michel & Associates, P.C.

1 180 E. Ocean Blvd., Suite 200
2 Long Beach, CA 90802

3 For Sellmark Corporation

4 Frederick W. Kosmo, Jr.
5 Wilson Turner Kosmo, LLP
402 West Broadway, Suite 1600
San Diego, CA 92101

6 For Ferreiro:

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

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

12 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

13 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
14 which shall be deemed an original, and all of which, when taken together, shall constitute one and
15 the same document.

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

18 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
19 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
20 Defendant agrees it shall support approval of such Motion.

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

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

1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **12. ATTORNEY'S FEES**

5 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

7 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
8 pursuant to law.

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

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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: 5/5/2021

Date: _____

By: Anthony Ferreiro
ANTHONY FERREIRO

By: _____
TURNER'S OUTDOORS, INC.

Date: _____

By: _____

SELLMARK CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

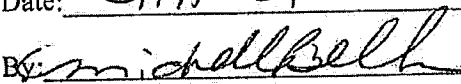
7
8 **AGREED TO:**

AGREED TO:

9
10 Date: _____

Date: 3/17/2021

11 By: _____
12 ANTHONY FERREIRO

By: 
TURNER'S OUTDOORS, INC.

13 Date: _____

14 By: _____
15 SELLMARK CORPORATION

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

17
18 Dated: _____

Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.
7

8 **AGREED TO:**

AGREED TO:

9
10 Date: _____

Date: _____

11 By: _____
12 ANTHONY FERREIRO

By: _____
TURNER'S OUTDOORS, INC.

13 Date: 3/9/2021

14 By: [Signature]
15 SELLMARK CORPORATION

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

17
18 Dated: 3/9/2021

STEPHEN P. FRECCERO
Judge of Superior Court