

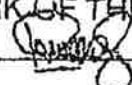
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FILED
San Francisco County Superior Court

JUL 19 2023

CLERK OF THE COURT

BY:  Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 ANTHONY FERREIRO,

13 Plaintiff,

14 v.

15 CWI, INC., REVO BRAND GROUP
16 HOLDINGS, INC.,

17 Defendants.

Case No.: CGC-22-597913

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: July 19, 2023

Hearing Time: 9:30 AM

Complaint Filed: February 7, 2022

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 Revo Brand Group
4 Holdings, Inc., Revo Brand Group, LLC (collectively, “Revo” or “Defendant”) with Ferreiro and
5 Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an
6 individual residing in California who seeks to promote awareness of exposures to toxic chemicals
7 and improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. Defendant is alleged to be a person in the course of doing business for purposes of
9 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to bisphenol A (BPA) from its sales of the Real Avid Smart Drive 90 Gunsmithing Kits
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. BPA is
13 listed under Proposition 65 as a chemical known to the State of California to cause reproductive
14 toxicity.

15 **1.3 Notice of Violation/Complaint.** On or about February 3, 2021, Ferreiro served
16 Revo, CWGS Group, LLC, CWI, Inc. (CWGS Group, LLC and CWI, Inc. are collectively referred
17 to herein as, “CWI”), and various public enforcement agencies with documents entitled “60-Day
18 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
19 Defendant violated Proposition 65 for failing to warn consumers and customers that use of Real
20 Avid Smart Drive 90 Gunsmithing Kits exposes users in California to BPA. No public enforcer has
21 brought and is diligently prosecuting the claims alleged in the Notice. On January 31, 2022, Ferreiro
22 filed a complaint (the “Complaint”) in the matter.

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

1 alleged in the Complaint and/or in the Notice.

2 1.5 **No Admission.** Defendant and CWI denies all material, factual, and legal
3 allegations contained in Ferreiro’s Notice and Complaint and maintains that it has not violated
4 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant
5 or CWI of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
6 Judgment constitute or be construed as an admission by Defendant or CWI of any fact, finding,
7 conclusion, issue of law, or violation of law, such being specifically denied by Defendant and CWI.
8 However, this Section shall not diminish or otherwise affect the obligations, responsibilities, and
9 duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term “Covered Products” means Real Avid Smart Drive 90
12 Gunsmithing Kits, that are manufactured, distributed and/or offered for sale in California by
13 Defendant.

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 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
18 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2 must be
19 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
20 offers for sale in California. However, there shall be no obligation for Defendant, Defendant
21 Releasees, and Chain of Distribution Releasees (as those terms are defined in § 5.1) to provide a
22 warning as set forth in this §§ 3.1 and 3.2 for Covered Products that are manufactured or enter the
23 stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning**
24 or **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

- 25 (a) **Warning.** For Covered Products containing lead and lead compounds, the
26 “Warning” shall consist of the statement:

27 ⚠ **WARNING:** This product can expose you to chemicals including lead and
28 lead compounds, which are known to the State of California to cause cancer and

1 birth defects or other reproductive harm. For more information go to
2 www.P65Warnings.ca.gov.

3 (b) **Alternative Warning:** Defendant may, but is not required to, use the alternative
4 short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

5  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

6 (c) If the Covered Products contain lead and lead compounds and BPA, the warning in
7 § 3.1(a) or 3.1(b) is adequate. If the Covered Products contain only BPA, Defendant shall use the
8 warning in § 3.1(d) or 3.1(e).

9 (d) **Warning.** For Covered Products containing BPA, the “Warning” shall consist of
10 the statement:

11  **WARNING:** This product can expose you to chemicals including bisphenol
12 A (BPA), which is known to the State of California to cause birth defects or other
13 reproductive harm. For more information go to www.P65Warnings.ca.gov.

14 (e) **Alternative Warning:** Defendant may, but is not required to, use the alternative
15 short-form warning as set forth in this § 3.1(e) (“**Alternative Warning**”) as follows:

16  **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

17 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 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** or **Alternative Warning** shall be affixed
23 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
24 electronic device or automatic process, providing that the warning is displayed with such
25 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
26 read and understood by an ordinary individual under customary conditions of purchase or use. The
27 **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling,
28 or instruction booklet that states other safety warnings, if any, concerning the use of the Covered
Product and shall be at least the same size as those other safety warnings.

1 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
2 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
3 Defendant offers Products for sale to consumers in California. The requirements of this Section
4 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the
5 word "**WARNING**," appears on the product display page, or by otherwise prominently displaying
6 the warning to the purchaser prior to completing the purchase. To comply with this Section,
7 Defendant shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the
8 ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the
9 ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet
10 sellers, provide the **Warning** or **Alternative Warning** on the label or labeling of the Covered
11 Products that satisfies Section 3.1, or providing such sellers with written notice in accordance with
12 Title 27, California Code of Regulations, Section 25600.2.

13 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
14 compliance with this Consent Judgment by adhering to §§ 3.1 and 3.2 of this Consent Judgment or
15 by complying with warning requirements adopted by the State of California's Office of
16 Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Product and the
17 exposure at issue after the Effective Date.

18 **4. MONETARY TERMS**

19 4.1 **Civil Penalty.** Defendant shall pay \$1,000.00 as a Civil Penalty pursuant to Health
20 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
21 Safety Code § 25249.12(c)(1) and (d), 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 fourteen (14) days of the Effective Date, Defendant shall issue two
25 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to
26 (b) "Brodsky & Smith in Trust for Ferreiro" in the amount of \$250.00 Payment owed to Ferreiro
27 pursuant to this Section shall be delivered to the following payment address:
28

1 Evan J. Smith, Esquire
2 Brodsky & Smith
3 Two Bala Plaza, Suite 805
4 Bala Cynwyd, PA 19004

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

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

19 A copy of the check payable to OEHHHA shall be mailed to Brodsky & Smith at the address set
20 forth above as proof of payment to OEHHHA.

21 4.2 **Attorneys' Fees.** Within fourteen (14) days of the Effective Date, Defendant shall
22 pay \$16,500.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for
23 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
24 Defendant attention, litigating and negotiating and obtaining judicial approval of a settlement in
25 the public interest, pursuant to Code of Civil Procedure § 1021.5.

26 **5. RELEASE OF ALL CLAIMS**

27 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
28 acting on his own behalf and on behalf of the public interest, and on behalf of his past and current
agents, representatives, attorneys, successors, and/or assignees, and Revo, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
beneficiaries, insurers, 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

1 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
2 customers, licensors, licensees retailers (including CWI and their direct and indirect parents,
3 subsidiaries, affiliates), franchisees, and cooperative members ("Chain of Distribution Releasees"),
4 of all claims for alleged violations of Proposition 65 based on exposure to BPA from use of the
5 Covered Products as set forth in the Notice and Complaint, with respect to any Covered Products
6 manufactured, distributed, or sold by Defendant prior to the Effective Date. It is the Parties'
7 intention that this Consent Judgment shall have preclusive effect such that no other actions by
8 private enforcers, whether purporting to act in his, her, or its interests or the public interest, shall
9 be permitted to pursue and/or take any action with respect to any alleged violation of Proposition
10 65 based on exposure to BPA that was alleged in the Notice and Complaint, or that could have been
11 brought pursuant to the Notice and Complaint against Defendant, CWI, and/or the Defendant
12 Releasees and Chain of Distribution Releasees of the Covered Products ("Proposition 65 Claims").

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

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
27 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 5.3 Defendant waives any and all claims against Ferreiro, his attorneys and other
4 representatives, for any and all actions taken, or statements made (or those that could have been
5 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
7 and/or with respect to Covered Products.

8 **6. INTEGRATION**

9 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
10 prior negotiations and understandings related hereto shall be deemed to have been merged within
11 it. No representations or terms of agreement other than those contained herein exist or have been
12 made by any Party with respect to the other Party or the subject matter of this Consent Judgment.

13 **7. GOVERNING LAW**

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

19 **8. NOTICES**

20 8.1 Unless specified in this Consent Judgment, all correspondence and notices required
21 to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or
22 sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier
23 on any party by the other party at the following addresses. In addition to (i) and (ii) above, any
24 notice required or permitted by this Consent Judgment shall also be provided via electronic mail if
25 an email address is provided for the recipient below:
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28

For Defendant and CWI:

Greg Berlin
Alston & Bird
333 South Hope Street, 16th Floor
Los Angeles, CA 90071
greg.berlin@alston.com

For Ferreiro:

Evan Smith
Brodsky & Smith
Two Bala Plaza, Ste. 805
Brodsky Smith, PA 19004
esmith@brodskysmith.com

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

10.1 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.

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

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

11. MODIFICATION

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

1 **12. ATTORNEY'S FEES**

2 12.1 If a dispute arises with respect to either Party's compliance with the terms of this
3 Consent Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone,
4 and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion
5 may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

6 12.2 A Party who unsuccessfully brings or contests an action arising out of this Consent
7 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

8 12.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
9 pursuant to law.

10 **13. RETENTION OF JURISDICTION**

11 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
12 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 in this Consent Judgment each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date:

2/21/23

Date:

2/21/23

By

ANTHONY FERREIRA

By

REVO BRAND GROUP HOLDINGS, INC

AGREED TO:

Date:

2/21/23

By:

REVO BRAND GROUP, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

7/19/23

Judge of Superior Court

RICHARD B. ULMER