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FILED
Superior Court of California
County of San Francisco

JAN 19 2022

CLERK OF THE COURT

BY: *[Signature]*
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 LIBERTY MOUNTAIN SPORTS, LLC,

15 Defendant.

Case No.: CGC-21-594104

CONSENT JUDGMENT

Judge: Ethan P. Schulman

Dept.: 302

Hearing Date: December 20, 2021

Hearing Time: 9:30 AM

Reservation #:

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 of the citizens of the State of California (hereinafter
4 “Ferreiro”) and Liberty Mountain Sports, LLC (“Liberty Mountain” or “Defendant”) with Ferreiro
5 and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an
6 individual residing in California that 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. Liberty Mountain is alleged to be a person in the course of doing business for purposes
9 of 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 carbon monoxide and/or soot from its sales of products used to start fires, including
12 but not limited to the Olicamp Sparkler Fire Starter, UPC #000194030029 (collectively, “Fire
13 Starters”), without providing a clear and reasonable exposure warning pursuant to Proposition 65.
14 Carbon monoxide is listed under Proposition 65 as a chemical known to the State of California to
15 cause reproductive toxicity. On February 27, 1987, the State of California listed soot as a chemical
16 known to the State to cause cancer and it has come under the purview of Proposition 65 regulations
17 since that time. Carbon Monoxide and soot are collectively referred to herein as, the “Listed
18 Chemicals.”

19 **1.3 Notices of Violation/Action.** On or about January 28, 2021, Ferreiro served Liberty
20 Mountain, and various public enforcement agencies with documents entitled “60-Day Notice of
21 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
22 violated Proposition 65 for failing to warn consumers and customers that use of the Products expose
23 users in California to carbon monoxide and/or soot. No public enforcer has brought and is diligently
24 prosecuting the claims alleged in the Notice. On July 30, 2021, Ferreiro gave notice of alleged
25 violation of Health and Safety Code § 25249.6 (the “Amended Notice”) to Defendant concerning
26 the exposure of California citizens to the Listed Chemicals from use of the Products without proper
27 warning, subject to a private action to Defendant and to the California Attorney General’s office
28

1 and the offices of the County District attorneys and City Attorneys for each city with a population
2 greater than 750,000 persons wherein the herein violations allegedly occurred. The Notice and
3 Amended Notice are collectively referred to herein as, the "Notices."

4 On June 27, 2021, Ferreiro filed a complaint (the "Complaint") in the matter. On October
5 7, 2021, Ferreiro filed an amended complaint (the "Amended Complaint") in the matter. The
6 Complaint and Amended Complaint are collectively referred to herein as, the "Action."

7 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
8 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
9 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
10 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
11 of all claims which were or could have been raised in the Action based on the facts alleged therein
12 and/or in the Notices.

13 1.5 Defendant denies the material allegations contained in Ferreiro's Notices and Action
14 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
15 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
16 shall compliance with this Consent Judgment constitute or be construed as an admission by
17 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
18 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
19 responsibilities, and duties of Defendant under this Consent Judgment.

20 **2. DEFINITIONS**

21 2.1 **Covered Products.** The term "Covered Products" means Fire Starters, that are
22 manufactured, distributed, sold and/or offered for sale in California by Liberty Mountain, that
23 expose users to carbon monoxide and/or soot.

24 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
25 entered as a Judgment of the Court.

1 **3. INJUNCTIVE RELIEF: WARNINGS**

2 **3.1 Clear and Reasonable Warning.** As of the Effective Date, Liberty Mountain
3 agrees to manufacture, import, or purchase for sale in California only Products that are
4 accompanied by either of the following warnings:

5 (a) **Warning.** The “Warning” shall consist of the statement:

6 ⚠ **WARNING:** This product can expose you to chemicals including carbon
7 monoxide and soot, which are known to the State of California to cause cancer and
8 birth defects or other reproductive harm. For more information go to
9 www.P65Warnings.ca.gov.

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

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

13 Liberty Mountain and its downstream retailers shall have no obligation to label Covered
14 Products that entered the stream of commerce prior to the Effective Date.

15 **3.2 A Warning or Alternative Warning** provided pursuant to § 3.1 must print the word
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word “**WARNING:**”. The Warning or Alternative Warning shall be affixed
21 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, provided that the Warning or Alternative Warning is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use. A Warning or Alternative Warning may be contained in the same section of the
26 packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the
27 use of the Covered Product and shall be at least the same size as those other safety warnings.

28 If Liberty Mountain sells Covered Products via an internet website to customers located in
California, the warning requirements of this section shall be satisfied if the foregoing Warning or

1 Alternative Warning appears either: (a) on the same web page on which a Covered Product is
2 displayed and/or described; (b) on the same page as the price for the Covered Product; or (c) on
3 one or more web pages displayed to a purchaser prior to purchase during the checkout process.
4 Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral
5 triangle may appear adjacent to or immediately following the display, description, price, or
6 checkout listing of the Covered Product, if the warning statement appears elsewhere on the same
7 web page in a manner that clearly associates it with the Covered Product(s) to which the warning
8 applies.

9 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
10 compliance with this Consent Judgment by (1) adhering to §§ 3.1 and 3.2 of this Consent Judgment;
11 and/or (2) complying with warning requirements adopted by the State of California's Office of
12 Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

13 **4. MONETARY TERMS**

14 **4.1 Civil Penalty.** Liberty Mountain shall pay \$2,000.00 as a Civil Penalty pursuant to
15 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
16 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
17 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
18 § 25249.12(d).

19 **4.1.1** Within ten (10) days of the Effective Date, Liberty Mountain shall issue two
20 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
21 to (b) "Brodsky Smith in Trust for Ferreiro" in the amount of \$500.00. Payment owed to Ferreiro
22 pursuant to this Section shall be delivered to the following payment address:

23 Evan J. Smith, Esquire
24 Brodsky Smith
25 Two Bala Plaza, Suite 805
26 Bala Cynwyd, PA 19004

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

28 For United States Postal Service Delivery:

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

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

12 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
13 above as proof of payment to OEHHA.

14 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Liberty Mountain shall
15 pay \$23,000.00 to Brodsky & Smith ("Brodsky Smith") as complete reimbursement for Ferreiro's
16 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Liberty
17 Mountain's attention, litigating, negotiating, and obtaining judicial approval of a settlement in the
18 public interest, pursuant to Code of Civil Procedure § 1021.5.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
21 acting on his own behalf, and on behalf of the public interest of the citizens of the State of
22 California, and Liberty Mountain, and its parents, shareholders, members, directors, officers,
23 managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,
24 partners, sister companies, and affiliates, and their predecessors, successors and assigns
25 (collectively the "Liberty Releasees"), and all entities from whom they obtain and to whom they
26 directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
27 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
28 cooperative members, including but not limited to Dick's Sporting Goods, Inc., American Sports
Licensing, Inc., and American Sports Licensing, LLC (collectively the "Downstream Releasees"),
of all claims for violations of Proposition 65 based on exposure to carbon monoxide and/or soot
from Covered Products as set forth in the Notices, with respect to any Covered Products

1 manufactured, distributed, or sold by Liberty Mountain prior to the Effective Date. It is the Parties'
2 intention that this Consent Judgment shall have preclusive effect such that no other actions by
3 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
4 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
5 alleged in the Action, or that could have been brought pursuant to the Notices against Liberty
6 Mountain, the Liberty Releasees, and/or the Downstream Releasees of the Covered Products
7 ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment constitutes
8 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 Liberty Mountain, Liberty Releasees, and Downstream Releasees from
13 any 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 Liberty Mountain, Liberty Releasees,
18 and/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.

26 5.3 Liberty Mountain waives any and all claims against Ferreiro, his attorneys and other
27 representatives, for any and all actions taken or statements made (or for a failure to make statements
28 and/or take action) by Ferreiro and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
2 and/or with respect to the 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 the Covered Products, then
12 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
13 to the extent that, the 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 by
18 the other party at the following addresses:

19 For Defendant:

20 Laura G. Kennedy
21 Parr Brown Gee & Loveless, P.C.
22 101 South 200 East, Suite 700
Salt Lake City, UT 84111

23 And

24 For Ferreiro:

25 Evan J. Smith, Esquire
26 Brodsky Smith
27 Two Bala Plaza, Suite 805
28 Bala Cynwyd, PA 19004

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 ("Motion"). 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.

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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: _____ Date: Oct 28, 2021
By: See Next page for signature By: [Signature]
ANTHONY FERREIRO LIBERTY MOUNTAIN SPORTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: Jan 19, 2022 [Signature]
Judge of Superior Court

ETHAN P. SCHULMAN

1 **13. RETENTION OF JURISDICTION**

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3 Consent Judgment.

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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 **AGREED TO:**

AGREED TO:

11
12 Date: 1/12/2021 Date: _____
13 By: Anthony Ferrero By: _____
14 ANTHONY FERREIRO LIBERTY MOUNTAIN SPORTS, LLC
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16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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18 Dated: _____ Judge of Superior Court
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