

1 Evan Smith (Bar No. SBN 242352)  
2 BRODSKY & SMITH  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212  
5 Tel: (877) 534-2590  
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

**FILED**  
Superior Court of California  
County of San Francisco

MAY 17 2023  
CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

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

11 DONATUS MCCOY,  
12 Plaintiff,  
13 v.  
14 FIRST TEXAS PRODUCTS, LLC,  
15 Defendant.

Case No.: CGC-22-600182

**[PROPOSED] CONSENT  
JUDGMENT**

Judge: Richard B. Ulmer  
Dept.: 302  
Hearing Date: May 9, 2023  
Hearing Time: 9:30 AM  
Complaint Filed: June 15, 2022

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1           **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Donatus  
3 McCoy acting on behalf of the public interest (hereinafter "McCoy") and First Texas Products,  
4 LLC ("First Texas" or "Defendant") with McCoy and Defendant collectively referred to as the  
5 "Parties" and each of them as a "Party." McCoy is an individual residing in California that seeks to  
6 promote awareness of exposures to toxic chemicals and improve human health by reducing or  
7 eliminating hazardous substances contained in consumer products. First Texas 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.** McCoy alleges that Defendant has exposed  
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of are Bounty Hunter Professional  
12 Headphones, UPC# 089723123005 without providing a clear and reasonable exposure warning  
13 pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State  
14 of California to cause cancer and reproductive toxicity.

15           **1.3 Notice of Violation/Complaint.** On or about October 13, 2021, McCoy served First  
16 Texas Products Corporation, First Texas Products, LLC, First Texas Products, LLC dba First Texas  
17 Products, LLC., Sportsman's Warehouse, Inc., and various public enforcement agencies with  
18 documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d)  
19 (the "Notice"), alleging that Defendant violated Proposition 65 for failing to warn consumers and  
20 customers that use of Bounty Hunter Professional Headphones, UPC# 089723123005 expose users  
21 in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims  
22 alleged in the Notice. On June 15, 2022, McCoy filed a complaint (the "Complaint") in the 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 San Francisco, and that this Court has jurisdiction to approve,  
26 enter, and enforce this Consent Judgment as a full and final binding resolution of all claims which  
27 were or could have been raised in the Complaint based on the facts alleged therein and/or in the  
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Notice.

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

**2. DEFINITIONS**

2.1 **Covered Products.** The term "Covered Products" means headphones, including but not limited to Bounty Hunter Professional Headphones, UPC# 089723123005 that are manufactured, distributed and/or offered for sale in California by First Texas.

2.2 **Effective Date.** The term "Effective Date" means the date that McCoy serves notice of entry of this Consent Judgment.

**3. INJUNCTIVE RELIEF**

3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing thereafter, Covered Products that First Texas directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable warning pursuant to §§ 3.3 and 3.4, below. First Texas may rely on its supplier's test results for compliance with this Consent Judgment. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

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3.3 **Clear and Reasonable Warning.** As of the Effective Date, the warnings set forth in this §§ 3.3 and 3.4 must be provided for any Covered Product that Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream of commerce prior to the Effective Date. For purposes of this Consent Judgment, “enter the stream of commerce” means that the Covered Product is no longer in the custody of First Texas.

The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, 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 First Texas offers Covered Products for sale to consumers in California and the consumer is able  
4 to complete the purchase on the website. The requirements of this Section shall be satisfied if the  
5 **Warning or Alternative Warning**, or a clearly marked hyperlink using the word "**WARNING,**"  
6 appears on the product display page, or by otherwise prominently displaying the warning to the  
7 purchaser prior to completing the purchase. To comply with this Section, First Texas shall (a) post  
8 the **Warning or Alternative Warning** on its own website if the website allows for the consumer  
9 to complete the purchase on the website and, if it has the ability to do so, on the websites of its  
10 third-party internet sellers where First Texas controls the content of the product display page. If  
11 First Texas does not have the ability to post the **Warning or Alternative Warning** on the websites  
12 of third-party distributors or retail sellers with whom it has written agreements to sell the Covered  
13 Products on the internet, First Texas shall provide such third-party distributors or retail sellers with  
14 written notice in accordance with Title 27, California Code of Regulations, Section 25600.2.

15 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
16 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
17 Judgment or by complying with warning requirements adopted by the State of California's Office  
18 of Environmental Health Hazard Assessment ("OEHHA") applicable to the product and the  
19 exposure at issue after the Effective Date.

20 **4. MONETARY TERMS**

21 4.1 **Civil Penalty.** First Texas shall pay \$2,000.00 as a Civil Penalty pursuant to Health  
22 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
23 Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the  
24 remaining 25% of the Civil Penalty remitted to McCoy, as provided by California Health & Safety  
25 Code § 25249.12(d).

26 4.1.1 Within ten (10) business days of the Effective Date, First Texas shall issue  
27 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;  
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1 and to (b) "Donatus McCoy" in the amount of \$500.00. Payment owed to McCoy pursuant to this  
2 Section shall be delivered to the following payment address:

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

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
19 1001 I Street  
20 Sacramento, CA 95814

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

23 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, First Texas  
24 shall pay \$20,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for  
25 McCoy's attorneys' fees and costs incurred as a result of investigating, bringing this matter to First  
26 Texas attention, litigating and negotiating and obtaining judicial approval of a settlement in the  
27 public interest, pursuant to Code of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between McCoy  
acting on his own behalf, and on behalf of the public interest, and First Texas, and its parents,  
shareholders, members, directors, officers, managers, employees, representatives, agents,  
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their

1 predecessors, successors and assigns ("Defendant 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 (including Sportsman's Warehouse, Inc.), franchisees, and cooperative members  
5 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to  
6 DEHP from use of the Covered Products as set forth in the Notice and Complaint, with respect to  
7 any Covered Products manufactured, distributed, or sold by First Texas prior to the Effective Date.  
8 It is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other  
9 actions by private enforcers, whether purporting to act in his, her, or its interests or the public  
10 interest shall be permitted to pursue and/or take any action with respect to any violation of  
11 Proposition 65 based on exposure to DEHP that was alleged in the Complaint, or that could have  
12 been brought pursuant to the Notice against First Texas, Defendant Releasees and/or the  
13 Downstream Releasees of the Covered Products ("Proposition 65 Claims").

14           5.2     In addition to the foregoing, McCoy, 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 First Texas, Defendant 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 exposure to DEHP from Covered Products manufactured, distributed, or sold by First Texas,  
23 Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers and releases  
24 in this paragraph, McCoy hereby specifically waives any and all rights and benefits which she now  
25 has, or in the future may have, conferred by virtue of the provisions of § 1542 of the California  
26 Civil Code, which 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 First Texas waives any and all claims against McCoy, his attorneys and other  
6 representatives, for any and all actions taken, or statements made by McCoy and her attorneys and  
7 other representatives, whether in the course of investigating claims or otherwise seeking  
8 enforcement of Proposition 65 against it in this matter, and/or with respect to exposure to DEHP  
9 from the Covered Products.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all  
12 prior negotiations and understandings related hereto shall be deemed to have been merged within  
13 it. No representations or terms of agreement other than those contained herein exist or have been  
14 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. If Proposition 65 is repealed or is otherwise  
18 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall  
19 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
20 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 Defendant:

27 Peg Carew Toledo  
28 Arnold & Porter Kaye Scholer LLP  
Three Embarcadero Center, 10<sup>th</sup> Floor  
San Francisco, CA 94111-4024

For Plaintiff:

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



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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 McCoy 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 the Consent Judgment.

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 such agreement is not reached within thirty (30) days, the case shall proceed on its normal course.

**11. MODIFICATION**

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

**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, modify, and/or enforce the Consent Judgment.

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2 **14. AUTHORIZATION**

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

8 **AGREED TO:**

**AGREED TO:**

9  
10 Date:

3/20/23

Date:

10-14-22

11 By:

DONATUS MCCOY

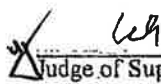
By:

FIRST TEXAS PRODUCTS, LLC

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

15  
16 Dated:

5/12/23

17  Judge of Superior Court

18 **RICHARD ULMER**