

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Alameda Superior Court / RCD

<p>Michael DiPirro Plaintiff/Petitioner(s) VS. The Boeing Company Defendant/Respondent(s)</p>	<p>No. 23CV027488 Date: 07/11/2023 Time: 10:31 AM Dept: 22 Judge: Jeffrey Brand  ORDER re: Ruling on Submitted Matter</p>
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The Court, having taken the matter under submission on 06/22/2023, now rules as follows:

The Motion to Confirm Settlement filed by Michael DiPirro on 05/02/2023 is Granted.

**ORDER AFTER HEARING**

Plaintiff's unopposed Motion to Approve Proposition 65 Settlement & Consent Judgement is GRANTED.

The court will adopt the parties' proposed consent judgment.

**BACKGROUND**

On February 8, 2023, Plaintiff filed a complaint for civil penalties and injunctive relief against Defendant The Boeing Company ("Defendant") asserting violations of California's Proposition 65. The complaint alleges "Diethylhexyl phthalate ('DEHP'), a toxic chemical, for exposures created by the use of aviation chart wallets sold in California, including but not limited to the Jeppesen-Chart Wallet, Item #10009530, AM621162." (Complaint, ¶ 1.)

Defendant answered on April 3, 2023.

Plaintiff now seeks approval of the settlement and consent judgment.

Pursuant to the terms of the proposed Consent Judgment, any "Products," which are defined as "Aviation Chart Wallets...including, but not limited to the Jeppesen-Chart Wallet, Item # 10009530, AM621162," above the Reformulation Level must be labeled with a clear and reasonable warning. (Consent Judgment, ¶¶ 1.5, 2.3.) The Reformulation Level is less than or equal to 0.1% (or 1,000 ppm) of DEHP. (Id., ¶ 2.2.)

Defendant will also make a payment of \$4,000 as a civil penalty pursuant to Health & Safety Code § 25249.7, subd. (b), as well as a payment of attorneys' fees and costs in the amount of \$74,500. (Consent Judgment, ¶¶ 3, 4.) In exchange, Plaintiff will provide a release and Civil Code § 1542 waiver. (Id., ¶ 5.)

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Plaintiff submits a declaration of compliance with 11 CCR § 3000, et seq. (Smith Decl., Ex. C [there is no slipsheet for Exhibit C].)

## LEGAL FRAMEWORK

A court may approve a Proposition 65 settlement only if the court makes all of the following findings: “(A) The warning that is required by the settlement complies with this chapter. (B) The award of attorney’s fees is reasonable under California law. (C) The penalty amount is

reasonable based on the criteria set forth in [H&S Code § 25249.7 (b)(2)].” (Health & Safety Code, § 25249.7, subd. (f)(4).)

## DISCUSSION

The Court finds that the warning and reformulation required by the Consent Judgment will comply with Health & Safety Code § 25249.6. (Bush Decl., ¶ 10.) The Court tentatively continued the matter to allow the parties to file a supplemental declaration explaining the basis for the Reformulation Level (less than or equal to 0.1% (or 1,000 ppm) of DEHP) and how it complies with Health & Safety Code § 25249.6. The parties contested the tentative ruling.

At the hearing, counsel directed the Court to another case pending before the Honorable Judge McKinney (*Ferreiro v. Sierra Trading Post, Inc.*, Case No. RG21099290), wherein the parties filed a document which supported the reformulation in that case. The parties indicated that the filing also supported their reformulation. The court takes judicial notice of the records in *Ferreiro v. Sierra Trading Post, Inc.*, Case No. RG21099290 pursuant to Evid. Code § 452, subd. (d).

Based upon the Court’s review of the filings in *Ferreiro v. Sierra Trading Post, Inc.*, Case No. RG21099290, California has set “no observable effect” exposure thresholds of 4200 and 410 micrograms per day, through the intravenous and oral routes, respectively, as the maximum allowable dose levels at which DEHP exposures pose “no observable effect” as to reproductive toxicity to adults assuming exposure at 1,000 times that level. California has set a “no significant risk” exposure threshold of 310 micrograms per day for adults exposed to DEHP. (Cal. Code Regs., tit. 27, § 25705, subd. (b)(1).)

Based upon the foregoing, the Court finds that the warning and reformulation required by the Consent Judgment complies with Health & Safety Code § 25249.6.

The Court finds that the Consent Judgment’s award of attorneys’ fees is reasonable under California law. (Bush Decl., ¶ 14 & Ex. B.)

The Court finds that the penalty amount is reasonable based on the criteria set forth by Health and Safety Code, § 25249.7, subd. (b)(2) and California Code of Regulations, title 11, § 3203. (Bush Decl., ¶ 12.)

Therefore, the Motion is GRANTED. The Court will sign the proposed Consent Judgment.

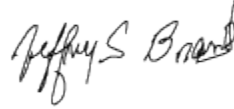
Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-

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represented parties of record.

Dated: 07/11/2023

A handwritten signature in black ink that reads "Jeffrey S. Brand". The signature is written in a cursive, slightly slanted style.

**Jeffrey Brand / Judge**

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 07/11/2023
PLAINTIFF/PETITIONER: Michael DiPirro	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy B. Mercado
DEFENDANT/RESPONDENT: The Boeing Company	
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>	CASE NUMBER: 23CV027488

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 07/11/2023

Chad Finke, Executive Officer / Clerk of the Court

By:



B. Mercado, Deputy Clerk