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6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10

11
12 MICHAEL DIPIRRO,

13 Plaintiff,

14 v.

15 ACCO BRANDS CORPORATION; *et al.*,

16 Defendants.
17

Case No. **RG15791352**

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, MICHAEL DIPIRRO
4 (“DiPirro”), and defendant, ACCO Brands Corporation (“ACCO” or “Defendant”), with DiPirro and
5 ACCO each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 DiPirro is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 ACCO employs ten or more persons and is a person in the course of doing business for
12 purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
13 § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 DiPirro alleges that ACCO sold binders containing Diisononyl phthalate (“DINP”) without
16 first providing the clear and reasonable warning required by Proposition 65. DINP is listed pursuant
17 to Proposition 65 as a chemical known to the state of California to cause cancer.

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are binders containing DINP that
20 ACCO imports, manufactures, sells, or distributes for sale to California consumers (collectively
21 “Products”) including, but not limited to, the *Wilson Jones® Custom Imprint Presentation Binder, 1”*
22 *Rings, Black (#W46100) (UPC # 078910461006)*.

1 **1.6 Notice of Violation**

2 On or about April 21, 2015, DiPirro served ACCO and the requisite public enforcement
3 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of
4 DiPirro’s allegation that ACCO and its retailers were in violation of Proposition 65 for failing to
5 warn their customers and consumers in California that the Products expose users to DINP. To the
6 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
7 allegations set forth in the Notice.

8 **1.7 Complaint**

9 On or about October 1, 2015, DiPirro filed the instant action against ACCO (“Complaint”) for
10 the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

11 **1.8 No Admission**

12 ACCO denies the material, factual and legal allegations contained in the Notice and
13 Complaint, and they maintain that all of the products that they have sold and distributed in California,
14 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
15 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
16 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
17 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
18 not, however, diminish or otherwise affect ACCO’s obligations, responsibilities, and duties under this
19 Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over ACCO as to the allegations in the Complaint, that venue is proper in Alameda
23 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
24 Judgment.

25 **1.10 Effective Date**

26 The term “Effective Date” means the date on which the Motion for Approval of the Consent
27 Judgment is granted by the Court.
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 Commencing on the April 1, 2016 and continuing thereafter, ACCO shall only import,
3 manufacture, sell, or distribute for sale to California consumers Products that are “Reformulated
4 Products.” Reformulated Products contain a maximum of 1,000 parts per million (0.1%) DINP
5 content in any Accessible Component (i.e., any component that may be touched or handled during a
6 reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and
7 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of
8 determining DINP content in a solid substance. ACCO shall further use reasonable commercial
9 efforts to introduce Reformulated Products in advance of April 1, 2016.

10 **3. MONETARY PAYMENTS**

11 **3.1 Civil Penalty Payments**

12 Pursuant to Health & Safety Code § 25249.7(b), shall pay the civil penalty of \$12,000.00
13 within five (5) calendar days of court approval of this Consent Judgment. This civil penalty was
14 reached after a significant waiver of an additional \$24,000 in penalties due to ACCO’s commitment
15 to reformulation as of April 1, 2016. The penalty payment shall be allocated according to Health &
16 Safety Code § 25249.12 (c) (1) and (d), with seventy-five percent (75%) of the penalty amount
17 earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and
18 the remaining twenty-five (25%) of the penalty amount earmarked for DiPirro. The penalty payment
19 shall be delivered to the address listed in Section 3.3 below.

20 **3.2 Reimbursement of DiPirro’s Fees and Costs**

21 The Parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
23 to be resolved after the material terms of the agreement had been settled. Shortly after all other
24 settlement terms had been finalized, ACCO expressed a desire to resolve the fees and costs. The
25 Parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his
26 counsel under general contract principles and the private attorney general doctrine codified at Code
27 of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs
28 incurred on appeal, if any. Under these legal principles, within five (5) calendar days of court

1 approval of this Consent Judgment, ACCO shall pay \$44,500 for the fees and costs incurred
2 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be
3 incurred) drafting, negotiating, and obtaining the Court’s approval of this Consent Judgment in the
4 public interest.

5 **3.3 Payment Procedures**

6 **3.3.1 Payments**

7 Payments shall be delivered to the offices of Bush & Henry, Attorneys at Law, PC
8 and shall be in the form of three checks for the following amounts made payable to:

- 9 (a) “Law Office of David R. Bush” in the amount of \$9,000.00 for payment to
10 OEHHA. Law Office of David R. Bush agrees to forward such funds to OEHHA in a
11 timely manner.
12 (b) “Law Office of David R. Bush ” in the amount of \$3,000 as payment to
13 Michael DiPirro. David R. Bush agrees to forward such funds in a timely manner.;
14 and
15 (c) “Bush & Henry” in the amount of \$44,500, as payment for attorneys’ fees and
16 costs.

17 **3.3.2 Issuance of 1099 Forms**

18 After the Consent Judgment has been approved, ACCO shall provide DiPirro’s
19 counsel with a separate 1099 form for each of its payments under this Agreement to:

- 20 (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010,
21 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the 2015
22 calendar year;
23 (b) “Michael DiPirro”, whose address and tax identification number shall be
24 furnished after this Consent Judgment has been fully executed by the Parties for the
25 civil penalty payment in the 2015 calendar year; and
26 (c) “Bush & Henry ” for fees and costs reimbursed pursuant to section 3.2.

27 **3.3.3 Payment Address**

1 All payments and tax forms required by this Section shall be delivered to the
2 following address:

3 Bush & Henry
4 3270 Mendocino Ave. #2E
5 Santa Rosa, CA 95403

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 DiPirro's Public Release of Proposition 65 Claims**

8 DiPirro, acting on his own behalf and in the public interest, releases ACCO, its officers,
9 directors, attorneys, representatives, shareholders, parents, subsidiaries, affiliates, divisions,
10 predecessors, successors, subdivisions, manufacturers ("Releasees"), and each entity to whom it
11 directly or indirectly distributes or sells the Products including, but not limited to, its downstream
12 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
13 licensees ("Downstream Releasees") from all claims for violations of Proposition 65 based on
14 exposures to DINP from Products imported, manufactured, distributed, or sold by ACCO up through
15 the Effective Date, as set forth in the Notice and the Complaint. Compliance with the terms of this
16 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DINP
17 from the Products sold by ACCO after the Effective Date.

18 **4.2 DiPirro's Individual Release of Claims**

19 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a
20 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
21 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
22 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,
23 suspected or unsuspected, arising out of alleged or actual exposures to DINP in the Products
24 imported, manufactured, sold or distributed for sale by ACCO before the Effective Date.

25 **4.3 ACCO's Release of DiPirro**

26 ACCO on behalf of itself and on behalf of its past and current agents, representatives,
27 attorneys, successors, and/or assignees, hereby waives any and all claims against DiPirro and his
28 attorneys and other representatives, for any and all actions taken or statements made (or those that

1 could have been taken or made) by DiPirro and his attorneys and other representatives, whether in
2 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
3 matter, or with respect to the Products.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and shall
6 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
7 has been fully executed by all Parties.

8 **6. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
10 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
11 adversely affected.

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the state of California
14 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
15 otherwise rendered inapplicable by reason of law generally, or as to the Products, then ACCO may
16 provide written notice to DiPirro of any asserted change in the law, and shall have no further
17 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
18 so affected. Nothing in this Consent Judgment shall be interpreted to relieve ACCO from any
19 obligation to comply with any pertinent state or federal toxics control laws. This Consent Judgment
20 shall be interpreted in accordance with the fair meaning of the terms herein, without regard to which
21 Party may have drafted any specific provision.

22 **8. NOTICES**

23 Unless specified herein, all correspondence and notices required by this Consent Judgment
24 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
25 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

26 For ACCO:

27 General Counsel
28 ACCO Brands Corporation
Four Corporate Drive

1 Lake Zurich, IL 60047-8997

2 With a copy to:

3 Jeffrey Margulies, Esq.
4 Norton Rose Fulbright US LLP
5 555 South Flower Street, Forty-First Floor
6 Los Angeles, California 90071

6 For DiPirro:

7 Bush & Henry
8 3270 Mendocino Ave. #2E
9 Santa Rosa, CA 95403

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

11 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

12 This Consent Judgment may be executed in counterparts and by facsimile or portable
13 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
14 taken together, shall constitute one and the same document.

15 **10. POST EXECUTION ACTIVITIES**

16 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
17 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
18 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. ACCO agrees
19 to support the entry of this agreement as a Consent Judgment, and to obtain judicial approval of the
20 settlement in a timely manner.

21 **10. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
23 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
24 application of any Party and the entry of a modified consent judgment by the Court.

25 **11. OTHER TERMS**

26 **11.1** This Consent Judgment contains the sole and entire agreement and understanding of
27 the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all
28 prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed

1 merged. There are no warranties, representations, or other agreements between the Parties except as
2 expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or
3 implied, other than those specifically referred to in this Consent Judgment have been made by any
4 Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or
5 otherwise, shall be deemed to exist or to bind any of the Parties. No waiver of any of the provisions
6 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
7 whether or not similar, nor shall such waiver constitute a continuing waiver.

8 **11.2** The Parties, including their counsel, have participated in the preparation of this
9 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
10 Consent Judgment was subject to revision and modification by the Parties and has been accepted and
11 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
12 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
13 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees
14 that any statute or rule of construction providing that ambiguities are to be resolved against the
15 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
16 regard, the Parties hereby waive California Civil Code section 1654.

17 **12. AUTHORIZATION**

18 The undersigned are authorized to execute this Consent Judgment and have read, understood,
19 and agree to all of the terms and conditions contained herein.

20 **AGREED TO:**

AGREED TO:

21
22 Date: 3/25/16

Date: _____

23
24 By: 

By: _____

25 MICHAEL DIPIRRO

ACCO Brands Corporation

1 merged. There are no warranties, representations, or other agreements between the Parties except as
2 expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or
3 implied, other than those specifically referred to in this Consent Judgment have been made by any
4 Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or
5 otherwise, shall be deemed to exist or to bind any of the Parties. No waiver of any of the provisions
6 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
7 whether or not similar, nor shall such waiver constitute a continuing waiver.

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16 regard, the Parties hereby waive California Civil Code section 1654.

17 **12. AUTHORIZATION**

18 The undersigned are authorized to execute this Consent Judgment and have read, understood,
19 and agree to all of the terms and conditions contained herein.

20 **AGREED TO:**

AGREED TO:

21 Date: _____

22 Date: 4/5/14 _____

23 By: _____

24 By: [Signature], Vice Pres./Assoc. Coun'l

25 MICHAEL DIPIRRO

26 ACCO Brands Corporation

[Signature]
27 Counsel