

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH, LLC.
3 2 Bala Plaza, Suite 510
4 Bala Cynwyd, PA 19004
5 Tel: (610) 667-6200
6 Fax: (610) 667-9029

7
8
9 Attorneys for Plaintiff
10 Anthony Ferreiro

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 CHAPIN INTERNATIONAL, INC.,

15 Defendant.

CASE NO.: RG16808622

CONSENT JUDGMENT

Judge: Robert McGuiness

Dept.: 22

Hearing Date: May 31, 2016

Hearing Time: 3:00 PM

Reservation #: R-1731719

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

10 **1.2 Allegations and Representations.** Ferreiro alleges that Chapin has exposed
11 individuals to Di(2-ethylhexyl)phthalate (“DEHP”) from lawn and garden sprayer hoses without
12 providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition
13 65 as a chemical known to the State of California to cause reproductive toxicity.

14 **1.3 Notices of Violation/Complaint.** On or about July 29, 2015, Ferreiro served
15 Chapin and various public enforcement agencies with a document entitled “60-Day Notice of
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Chapin was
17 in violation of Proposition 65 for failing to warn consumers and customers that the lawn and garden
18 sprayer hoses exposed users in California to DEHP. No public enforcer has brought and is
19 diligently prosecuting the claims alleged in the Notice. On March 22, 2016, Ferreiro filed a
20 complaint in the matter as captioned above (“Complaint”).

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Chapin as to the allegations contained in the complaint filed in this matter, that
23 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
24 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
25 claims which were or could have been raised in the Complaint based on the facts alleged therein
26 and/or in the Notice.

1 1.5 Chapin denies the material allegations contained in Ferreiro’s Notice and Complaint
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Chapin of any fact, finding, issue of law, or violation of law; nor shall
4 compliance with this Consent Judgment constitute or be construed as an admission by Chapin of
5 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
6 Chapin. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Chapin under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means sprayers and replacement
10 hoses for sprayers.

11 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: WARNINGS**

14 3.1 Commencing on the August 1, 2016, Chapin shall not manufacture for sale in
15 California any Covered Product with a sprayer hose that contains more than 1,000 parts per million
16 DEHP, unless the Covered Product is accompanied by the following warning: “WARNING: This
17 product contains chemical[s, including lead,]¹ known to the State of California to cause birth defects
18 and other reproductive harm. *Wash hands after handling.*”

19 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
20 Covered Product’s packaging, labeling, or instruction booklet. The warning shall be prominently
21 affixed to or printed on the packaging, labeling, or instruction booklet and displayed with such
22 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
23 read and understood by an ordinary individual under customary conditions of purchase or use. A
24 warning may be contained in the same section of the packaging, labeling, or instruction booklet

25 _____
26 ¹ The phrase “chemicals, including lead,” may be used for any Covered Product that
27 contains a component made from brass that contains lead as an additionally added ingredient,
28 where such brass comes into contact with the user, so that Chapin remains in compliance with the
consent judgment entered in *Mateel Environmental Justice Foundation v. Chapin International*,
San Francisco Superior Court, Case No. CGC-08-478535.

1 that states other safety warnings, if any, concerning the use of the product and shall be at least the
2 same size as those other safety warnings.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Chapin shall pay a civil penalty of \$2,500.00 pursuant to Health and
5 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
6 Code § 25192, with 75% of these funds remitted to the State of California's Office of
7 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
8 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

9 4.1.1 Within ten (10) business days of the Effective Date, Chapin shall issue two
10 separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$1,875.00; and
11 (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$625.00. Payment owed to
12 Ferreiro pursuant to this Section shall be delivered to the following payment address:

13 Evan J. Smith, Esquire
14 Brodsky & Smith, LLC
15 Two Bala Plaza, Suite 510
16 Bala Cynwyd, PA 19004

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

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
24 Sacramento, CA 95812-4010

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

1 4.2 **Attorney Fees.** Chapin shall pay \$22,500.00 to Brodsky & Smith, LLC (“Brodsky
2 Smith”) as complete reimbursement for Plaintiff Ferreiro’s attorneys’ fees and costs incurred as a
3 result of investigating, bringing this matter to Chapin’s attention, litigating and negotiating and
4 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
5 Procedure section 1021.5. Payment shall be made within ten (10) business days of the Effective
6 Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

7 4.3 Chapin shall pay the civil penalty and attorney fees in Sections 4.1 and 4.2 within
8 ten (10) days of the Effective Date.

9 **5. RELEASE OF ALL CLAIMS**

10 5.1 This consent judgment is a full, final, and binding resolution between Ferreiro acting
11 in the public interest, and Chapin and its parents, shareholders, divisions, subdivisions, subsidiaries,
12 partners, sister companies, and affiliates, and their successors and assigns (“Defendant Releasees”),
13 and all entities from whom they obtain and to whom they directly or indirectly distribute or sell
14 Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
15 customers, licensors, licensees retailers, franchisees, and cooperative members, including but not
16 limited to W.W. Grainger, Inc., and its subsidiaries and affiliates (“Downstream Defendant
17 Releasees”), of all claims for violations of Proposition 65 based on exposure to DEHP from
18 Covered Products as set forth in the Notice, with respect to any Covered Products manufactured,
19 distributed, or sold by Chapin prior to the Effective Date. Compliance with the terms of this
20 consent judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

21 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
22 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
23 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
24 legal action and releases any Chapin, Defendant Releasees, and Downstream Defendant Releasees
25 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
26 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
27 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
28

1 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
2 from Covered Products manufactured distributed or sold by Chapin or Defendant Releasees. With
3 respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives
4 any and all rights and benefits which she now has, or in the future may have, conferred by virtue
5 of the provisions of Section 1542 of the California Civil Code, which provides as follows:
6

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
9 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
10 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
11 THE DEBTOR.

12 5.3 Chapin waives any and all claims against Ferreiro, his attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
16 and/or with respect to Covered Products.

17 **6. INTEGRATION**

18 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
19 any and all prior negotiations and understandings related hereto shall be deemed to have been
20 merged within it. No representations or terms of agreement other than those contained herein exist
21 or have been made by any Party with respect to the other Party or the subject matter hereof.

22 **7. GOVERNING LAW**

23 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed or
25 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
26 Chapin shall have no further obligations pursuant to this Consent Judgment with respect to, and to
27 the extent that, Covered Products are so affected.
28

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Chapin:

7 James Grant
8 Vice President
9 Chapin International, Inc.
10 700 Ellicott Street
11 P.O. Box 549
12 Batavia, NY 14021-0549

13 With a copy to:

14 Jeffrey Margulies
15 Norton Rose Fulbright US LLP
16 555 South Flower St.
17 Forty First Floor
18 Los Angeles, CA 90071

19 And

20 For Ferreiro:

21 Evan Smith
22 Brodsky & Smith, LLC
23 2 Bala Plaza, Suite 510
24 Bala Cynwyd, PA 19004

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

27 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

28 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.

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

3 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
4 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
5 and Chapin agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
8 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
9 30-days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
20 the unsuccessful party has acted with substantial justification. For purposes of this Consent
21 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
22 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

23 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
24 pursuant to law.

25 **13. RETENTION OF JURISDICTION**

26 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 certifies 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: 3/25/16
By: Anthony Ferrero
ANTHONY FERRERO

Date: 4/1/16
By: Jan H. [Signature]
CHAPIN INTERNATIONAL, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court