

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

9
10
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

ANTHONY FERREIRO,
Plaintiff,
v.
PISTON CLOTHING, LLC,
Defendant.

Case No.: RG16833881
CONSENT JUDGMENT
Judge: Stephen M. Pulido
Dept.: 16
Hearing Date: March 14, 2017
Hearing Time: 3:00 PM
Reservation #: R-1801089

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

10 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to Di(2-ethylhexyl) phthalate (DEHP) from *Sons of Anarchy Reaper Faux Leather Kids*
12 *Vests* without providing clear and reasonable warnings under Proposition 65. DEHP is listed under
13 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive
14 toxicity.

15 1.3 **Notices of Violation/Complaint.** On or about June 1, 2016, Ferreiro served Piston
16 Clothing, FX Networks, LLC (“FX”), Twenty-First Century Fox, Inc., Twentieth Century Fox Film
17 Corporation (collectively, “Fox”), and various public enforcement agencies with a document
18 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
19 “Notice”), alleging that Defendant was in violation of Proposition 65 for failing to warn consumers
20 and customers that the *Sons of Anarchy Reaper Faux Leather Kids Vests* exposed users in California
21 to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
22 Notice. On October 5, 2016, Ferreiro filed a complaint in the matter. On November 9, 2016,
23 Ferreiro filed an amended complaint (the “Complaint”).

24 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
26 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
27 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
28

1 claims which were or could have been raised in the Complaint based on the facts alleged therein
2 and/or in the Notice.

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

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means *Sons of Anarchy Reaper*
12 *Faux Leather Kids Vests*, SKU No. 6397-917600-0607, that are manufactured, distributed and/or
13 offered for sale in California by Piston Clothing.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 Commencing ninety (90) days after the Effective Date, Piston Clothing shall not
18 manufacture, import, or purchase for sale in California any Covered Product that contains more
19 than 1,000 parts per million DEHP, unless the Covered Product is accompanied by the following
20 warning: "WARNING: This product contains a chemical known to the State of California to cause
21 cancer, birth defects and other reproductive harm."

22 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
23 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
24 on the packaging or labeling and displayed with such conspicuousness, as compared with other
25 words, statements, or designs as to render it likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use. A warning may be contained in the same
27
28

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

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Piston Clothing shall pay a civil penalty of \$1,500.00 pursuant to
5 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
6 & Safety 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, Piston Clothing shall
10 issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of
11 \$1,125.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$375.00.

12 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment
13 address:

14 Evan J. Smith, Esquire
15 Brodsky & Smith, LLC
16 Two Bala Plaza, Suite 510
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
P.O. Box 4010
Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

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

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

3 4.2 **Attorney Fees.** Piston Clothing shall pay \$16,000.00 to Brodsky & Smith, LLC
4 (“Brodsky Smith”) as complete reimbursement for Plaintiff Ferreiro’s attorneys’ fees and costs
5 incurred as a result of investigating, bringing this matter to Piston Clothing’s attention, litigating
6 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
7 Code of Civil Procedure section 1021.5. Payment shall be made within ten (10) business days of
8 the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

9 4.3 Piston Clothing shall pay the civil penalty and attorney fees in Sections 4.1 and 4.2
10 within ten (10) days of the Effective Date.

11 **5. RELEASE OF ALL CLAIMS**

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

23 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
24 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
25 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
26 legal action and releases any Piston Clothing, Defendant Releasees, and Downstream Defendant
27 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
28

1 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
2 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed
3 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
4 to or arising from Covered Products manufactured distributed or sold by Piston Clothing or
5 Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro
6 hereby specifically waives any and all rights and benefits which she now has, or in the future may
7 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
8 provides as follows:
9

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

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

18 **6. INTEGRATION**

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

23 **7. GOVERNING LAW**

24 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
27
28

1 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
2 to the extent that, Covered Products are so affected.

3 **8. NOTICES**

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

8 For Defendant:

9
10 John Lucero
11 Piston Clothing, LLC
12 144 E. Garry Avenue
13 Santa Ana, CA 92707

14 And

15 For Ferreiro:

16 Evan Smith
17 Brodsky & Smith, LLC
18 2 Bala Plaza, Suite 510
19 Bala Cynwyd, PA 19004

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

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

28 10.1 Ferreiro 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
and Defendant agrees it shall support approval of such Motion.

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
3 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
4 30 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
15 the unsuccessful party has acted with substantial justification. For purposes of this Consent
16 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
17 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

18 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
19 pursuant to law.

20 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 **14. AUTHORIZATION**

24 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
25 respective Parties and have read, understood and agree to all of the terms and conditions of this
26 document and certifies that he or she is fully authorized by the Party he or she represents to execute
27

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

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: 1/23/2017
By: Anthony Ferreiro
ANTHONY FERREIRO

Date: 11/17/16
By: [Signature]
PISION CLOTHING, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of Superior Court