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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
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12 Plaintiff,
13 vs.
14 RAINE, INC.,
15 Defendant.

Case No. RG16829723
CONSENT JUDGEMENT
Judge: Victoria Kolakowski
Dept.: 23
Hearing Date: December 13, 2016
Hearing Time: _3:00 PM
Reservation #: R-1791596

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1. Introduction

1.1 On June 8, 2016, Anthony Ferreiro (“Ferreiro”) served Raine, Inc. (“Raine”), The Surplus Store, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice provided Raine and such others, including public enforcers, with notice that alleged that Raine was in violation of California Health & Safety Code § 25249.6 (“Proposition 65”), for failing to warn consumers and customers that ID tags and the lanyards that accompany them, including but not limited to UPC No. 725838025147 (“Product” or “Products”), exposed users in California to the chemical Diisononyl phthalate (DINP). No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.2 On September 2, 2016, Ferreiro filed a Complaint for Civil Penalties and Injunctive Relief (“Complaint”) in Alameda County Superior Court, Case No. RG16829723, against Raine alleging violations of Proposition 65.

1.3 Raine is a person under California Health and Safety Code §25249.6 and offered the Products for sale within the State of California.

1.4 Ferreiro’s Complaint alleges, among other things, that Raine sold the Products in California and/or to California citizens, that the Products contains DINP, and that the resulting exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons to a chemical known to the State of California to cause cancer without first providing a clear and reasonable warning to such individuals.

1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Raine as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of the allegations contained in the Complaint.

1.6 The parties enter into this Consent Judgment pursuant to a full settlement of disputed claims between the parties as alleged in the Complaint for the purpose of avoiding prolonged litigation. By execution of this Consent Judgment, Raine does not admit any violation of

1 Proposition 65 and specifically denies that it has committed any such violation. Nothing in this
2 Consent Judgment shall be construed as an admission by Raine of any fact, issue of law or violation
3 of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
4 by Raine of any fact, issue of law, or violation of law. Nothing in this Consent Judgment shall
5 prejudice, waive, or impair any right, remedy or defense that Raine may have in any other future
6 legal proceeding. However, this paragraph shall not diminish or otherwise affect the obligations,
7 responsibilities and duties of Raine under this Consent Judgment.

8 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date
9 that the Consent Judgment is entered by the Court.

10 **2. Injunctive Relief**

11 2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
12 Raine shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to Section
13 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 2.3. Raine and
14 its downstream distributors or retailers shall have no obligation to label Products that entered the
15 stream of commerce prior to the Effective Date or within ninety (90) days after the Effective Date.
16 For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in
17 compliance with the standard set forth below in section 2.2.

18 2.2 "Reformulated Product" shall mean Product that contains less than or equal to 1,000
19 parts per million ("ppm") of DINP when analyzed pursuant to CPSC-CH-C1001-09.3 Standard
20 Operating Procedure for Determination of Phthalates method.

21 2.3 Commencing on the Effective Date, Raine shall, for all Products it sells or distributes
22 and that is intended for sale in California and that is not a Reformulated Product, provide clear and
23 reasonable warnings as set forth in subsections 2.3(a) and (b) below. The warning shall be
24 prominently placed with such conspicuousness as compared with other words, statements, designs,
25 or devices as to render it likely to be read and understood by an ordinary individual under customary
26 conditions before purchase or use. Each warning shall be provided in a manner such that the
27 consumer or user understands to which specific Product the warning applies, so as to minimize the
28 risk of consumer confusion.

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(a) Retail Store Sales

(i) Product Labeling. Raine shall affix a warning to the packaging, labeling or directly on each Product sold in retail outlets in California by Raine or any person selling the Product that states:

[PROPOSITION 65] WARNING:
This product contains a chemical known to the State of California to cause cancer.
The bracketed text may, but is not required to, be used.

(b) Mail Order Catalog Warning. In the event that Raine directly sells

Product via mail order catalog directly to consumers located in California after the Effective Date that is not a Reformulated Product, Raine shall provide a warning for such Product sold via mail order catalog to such California residents. A warning that is given in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

[PROPOSITION 65] WARNING:
This product contains a chemical known to the State of California to cause cancer.
The bracketed text may, but is not required to, be used. Where it is impracticable to provide the

warning on the same page and in the same location as the display and/or description of the Product, Raine may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product:

[PROPOSITION 65] WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the State of California to cause cancer.

The bracketed text may, but is not required to, be used. The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Raine must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

1 (c) **Internet Sales Warning.** In the event that Raine sells Product via the
2 internet directly to consumers located in California after the Effective Date that is not a
3 Reformulated Product, Raine shall provide a warning for such Product sold via the internet to such
4 California residents. A warning that is given on the internet shall be in the same type size or larger
5 than the Product description text and shall be given in conjunction with the direct sale of the Product.
6 The warning shall appear either: (a) on the same web page on which the Product is displayed; (b) on
7 the same web page as the order form for the Product; (c) on the same page as the price for the
8 Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The
9 following warning shall be provided:

10 **[PROPOSITION 65] WARNING:**

11 This product contains a chemical known to the State of California to cause cancer.

12 The bracketed text may, but is not required to, be used.

13 **3. Entry of Consent Judgment**

14 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.

15 Upon entry of this Consent Judgment, Ferreiro and Raine waive their respective rights to a hearing
16 or trial on the allegations of the Complaint and 60-Day Notice.

17 3.2 In the event that the Attorney General objects or otherwise comments on one or more
18 provisions of this Consent Judgment, Ferreiro and Raine agree to take reasonable steps to satisfy
19 such concerns or objections.

20 **4. Matters Covered By This Consent Judgment**

21 4.1 **Plaintiff’s Public Release of Proposition 65 Claims.** This Consent Judgment is

22 a final and binding resolution between Ferreiro, acting on his own behalf, and on behalf of the public
23 and in the public interest, and Defendant Raine, and shall have preclusive effect such that no other
24 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
25 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
26 alleged in the Complaint, or that could have been brought pursuant to the Notice against Raine or its
27 downstream distributors or retailers of the Product including but not limited to The Surplus Store
28 (“Proposition 65 Claims”). As to alleged exposures to DINP in the Product, compliance with the

1 terms of this Consent Judgment by Raine is deemed sufficient to satisfy all obligations concerning
2 compliance by Raine and its downstream distributors or retailers, including but not limited to The
3 Surplus Store with the requirements of Proposition 65 with respect to the Products.

4 **4.2 Plaintiff’s Release of Additional Claims.** As to Ferreiro for and in his individual
5 capacity only, this Consent Judgment shall have preclusive effect such that he shall not be permitted
6 to pursue and/or take any action with respect to any other statutory or common law claim, to the
7 fullest extent that any such claim was or could have been asserted by him against Raine or any and
8 all downstream distributors or retailers of the Products, including but not limited to The Surplus
9 Store, based on their exposure of Ferreiro to DINP in the Products, or their failure to provide a clear
10 and reasonable warning of exposure to Ferreiro as well as any other claim based in whole or in part
11 on the facts alleged in the Complaint and the Notice, whether based on actions committed by Raine
12 or its downstream distributors or retailers of the Products, including but not limited to The Surplus
13 Store (“DINP Exposure Claims”).

14 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to
15 Ferreiro’s public release of Proposition 65 Claims set forth in Section 4.1 (“Public Release”) and his
16 individual release of DINP Exposure Claims set forth in Section 4.2 (“Individual Release”), Ferreiro,
17 acting on his own behalf and on behalf of the public with respect to the Public Release and acting in
18 his individual capacity with respect to the Individual Release, waives all rights to institute any form
19 of legal action, and releases all claims against Raine and its downstream distributors or retailers,
20 including but not limited to The Surplus Store (including their parents, subsidiaries, affiliates,
21 assigns, and acquiring entities of any of them, who may use, maintain, distribute or sell the Products)
22 for the Proposition 65 Claims and the DINP Exposure Claims (referred to collectively in this
23 Section as “Claims”). In furtherance of the foregoing, Ferreiro, acting on his own behalf and on
24 behalf of the public with respect to the Public Release and acting in his individual capacity with
25 respect to the Individual Release, waives any and all rights and benefits which he now has, or in the
26 future may have, conferred upon him with respect to the Claims by virtue of the provisions of § 1542
27 of the California Civil Code, which provides as follows:

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1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
2 **CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER**
3 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
4 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
5 **SETTLEMENT WITH THE DEBTOR.**

6 **4.4 Raine’s Release of Plaintiff Ferreiro.** Raine, on behalf of itself, its past and
7 current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all
8 claims against Ferreiro, his attorneys, and other representatives for any and all actions taken or
9 statements made (or those that could have been taken or made) by Ferreiro and his attorneys and
10 other representatives, whether in the course of investigating claims or otherwise seeking enforcement
11 of Proposition 65 against Raine in this matter.

12 **5. Enforcement of Judgment**

13 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
14 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
15 Alameda County, giving the notice required by law, enforce the terms and conditions contained
16 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party may
17 seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of
18 Proposition 65 or this Consent Judgment.

19 **6. Modification of Judgment**

20 6.1 This Consent Judgment may be modified only by written agreement of the parties
21 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
22 provided by law and upon an entry of a modified Consent Judgment by the Court.

23 6.2 Should any court enter final judgment in a case brought by Ferreiro or the People
24 involving the Products that sets forth standards defining when Proposition 65 warnings will or will
25 not be required (“Alternative Standards”), or if the California Attorney General’s office otherwise
26 provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not
27 intended for the purpose of soliciting further input or comments) of Alternative Standards applicable
28 to products that are of the same general type and function as the Products and constructed from the

1 same materials, Raine shall be entitled to seek a modification of this Consent Judgment on sixty (60)
2 days' notice to Ferreiro so as to be able to utilize and rely on such Alternative Standards in lieu of
3 those set forth in Section 2 of this Consent Judgment. Ferreiro shall not unreasonably contest any
4 proposed application to effectuate such a modification provided that the Products for which such a
5 modification is sought are of the same general type and function as those to which the Alternative
6 Standards apply.

7 **7. Settlement Payment**

8 7.1 In settlement of all the claims referred to in this Consent Judgment, and without any
9 admission of liability therefore, Raine shall make the following monetary payments:

10 7.1.1 **Civil Penalty.** Within seven (7) business days of the Effective Date, Raine
11 shall pay a total of \$1,500.00 in civil penalties in accordance with this Section. The Initial Civil
12 Penalty payment will be allocated in accordance with California Health & Safety Code §§
13 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
14 Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil penalty remitted to
15 Ferreiro. Within seven (7) business days of the Effective Date, Raine shall issue two separate checks
16 for the civil penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and (b) "Brodsky &
17 Smith, LLC in Trust for Ferreiro" in the amount of \$375.00. Payment owed to Ferreiro pursuant to
18 this Section shall be delivered to the following payment address:

19 Evan J. Smith, Esquire
20 Brodsky & Smith, LLC
21 Two Bala Plaza, Suite 510
22 Bala Cynwyd, PA 19004

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

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

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Mike Gyurics
Fiscal Operations Branch Chief
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.

7.1.2 Attorney Fees and Costs. In addition to the payment above, Raine shall pay \$14,500.00 to Brodsky & Smith, LLC (“Brodsky & Smith”) as complete reimbursement for Ferreiro’s attorneys’ fees and costs, including any investigation and laboratory costs or expert fees, incurred in the course of bringing the Complaint and in enforcing Proposition 65, including without limitation, preparation of the 60-Day Notice letter and discussions with the office of the Attorney General. Payment shall be made within seven (7) business days of the Effective Date and sent to the address for Brodsky & Smith set forth in Section 7.1.1, above.

8. Notices

8.1 Any and all notices between the parties provided for or permitted under this Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Raine:

Gregory W. Guevara
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

For Ferreiro:

Evan J. Smith
BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212

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.

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9. Authority to Stipulate

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

10. Counterparts

10.1 This Stipulation may be signed in counterparts and shall be binding upon the parties hereto as if all said parties executed the original hereof.

11. Retention of Jurisdiction

11.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

12. Service on the Attorney General

12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General on behalf of the parties so that the Attorney general may review this Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment, and in the absence of any written objection by the Attorney General to the terms of this Consent Judgment, the parties may then submit it to the Court for Approval.

13. Entire Agreement

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitment and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

14. Governing Law and Construction

14.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

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15. Court Approval

15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

Dated: 10/19/16 Dated: 9/30/16

By: Anthony Ferreiro By: JG Raine
Anthony Ferreiro Raine, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court