

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

☐ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
CASE INFO	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No		IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /
	COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY		STATE	ZIP	E-MAIL ADDRESS

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

BURRIS LAW

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ANDREW BURRIS, an individual,

Plaintiff,

v.

COSTCO WHOLESALE CORPORATION,
a Washington corporation; U.S. WIRE &
CABLE CORPORATION, a New Jersey
corporation, FLEXON INDUSTRIES CORP.,
a New Jersey corporation; ANDERSON
INDUSTRIES, INC., a Delaware corporation;
and DOES 1 through 150, inclusive,

Defendant.

Case No. 30-2018-000980782-CU-MC-CJC

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Andrew Burris,
4 ("Burris") on the one hand, and U.S. Wire & Cable Corporation ("Defendant") on the other hand,
5 with Burris and Defendant individually referred to as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Burris is an individual residing in California who seeks to promote awareness of
8 exposures to chemicals.

9 **1.3 Defendant**

10 Defendant employs ten or more persons and is a person in the course of doing business for
11 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
12 Code Section 25249.6 *et seq.* ("Proposition 65").

13 **1.4 General Allegations**

14 Burris alleges that Defendant manufactures, imports, sells, or distributes for sale to
15 consumers in the State of California extension cords containing phthalates including Di(2-
16 ethylhexyl)phthalate ("DEHP"); di-isodecyl phthalate ("DIDP"); and Diisononyl Phthalate
17 ("DINP") ("the Chemicals") without first providing the clear and reasonable exposure warning
18 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is
19 known to the State of California to cause cancer and birth defects and other reproductive harm.
20 DIDP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to
21 cause birth defects and other reproductive harm. DINP is listed pursuant to Proposition 65 as a
22 chemical that is known to the State of California to cause cancer.

23 **1.5 Product Description**

24 The products covered by this Consent Judgment are extension cords containing some or
25 all of the Chemicals that are manufactured and/or distributed for authorized sale to consumers in
26 California by Defendant, including, but not limited to, the Anderson Industries Outdoor Lighted
27 Extension Cords 2-pack UPC # 44882101080, Model # 740050PK2V2 sold by Costco Wholesale
28 Corporation ("Products"). The Products include Products sold in Defendant's brand names

(including those set forth above) and Products Defendant manufactures and/or distributes for authorized sale in California under private label arrangements entered into with retailers or others.

1.6 Notice of Violation

On or about April 19, 2017, Burris served the above-captioned defendants and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Burris’s allegation that defendants violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Chemicals.

1.7 Complaint

After the 60-day notice period was exhausted without an authorized public prosecutor of Proposition 65 having asserted such claims, Burris filed the instant action against Defendant (“Complaint”) for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

1.8 No Admission

On behalf of itself and its co-defendants, Defendant denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, or distributed for authorized sale in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant. This section shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the County of Orange, and that this Court has jurisdiction to enter and enforce the provisions of this

1 Consent Judgment.

2 1.10 **Effective Date**

3 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
4 which Burris serves notice on the Defendant and the Office of the California Attorney General
5 that the Court has approved and entered this Consent Judgement.

6 2. **INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

7 As of the Effective Date, Defendant shall only manufacture, package, distribute and/or
8 ship for potential sale in California Products that meet the Reformulation Standard set forth in
9 Section 2.1 below (“Reformulated Products”) or which meet the warning requirements set forth in
10 Section 2.2 below.

11 2.1 **Reformulation Standard**

12 For purposes of this Consent Judgment, Reformulated Products are defined as Products
13 for which the accessible portions of their poly vinyl chloride (“PVC”) components (i.e., those that
14 can be mouthed or touched by an ordinary consumer during reasonably foreseeable use) contain
15 no more than 1,000 parts per million (0.1%) each of any of the following chemicals: DEHP,
16 DIDP, DBP, DINP, BBP, and DnHP (“Listed Phthalates”). For purposes of determining
17 compliance with this Consent Judgment, the content of Listed Phthalates shall be analyzed
18 pursuant to EPA testing methodologies 3580A and 8270C or equivalent methodologies utilized
19 by state or federal agencies for the purpose of determining Listed Phthalate content in a solid
20 substance.

21 2.2 **Product Warnings**

22 For all Products that contain a Listed Phthalate in an amount exceeding the Reformulation
23 Standard set forth in Section 2.1 above and which are distributed for potential sale in California
24 by Defendant following the Effective Date,¹ one of the following Proposition 65 warnings shall
25 be provided:

26 ¹ Products distributed for potential sale in California by Defendant prior to the Effective
27 Date are exempted from the requirements set forth in Sections 2.1 and 2.2 above and may be
28 offered for sale in California and sold through by downstream distributors, dealers, and retailers
as is.

WARNING: This product contains chemicals [including DEHP], which are known to the State of California to cause cancer and birth defects or other reproductive harm.

or

WARNING: This product can expose you to chemicals including [tbd and] DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov ²

or

WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov

The warning statement selected among the above shall be printed or placed on the Product's label or package in at least eight (8) point font and either set within a box or separated from other warning text by at least one line so as to be able to be read and understood by an ordinary individual prior to purchase or use.

3. STATUTORY PENALTY PAYMENTS

3.1 **Civil Penalty** Defendant shall pay \$2,000 in civil penalties pursuant to California Health & Safety Code § 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(l) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Burris. More specifically, within ten (10) business days of the Effective Date, Defendant shall issue two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of \$1,500 and with the memo line on the check indicating “Prop 65 Penalties—Burris v. U.S. Wire & Cable” (Defendant may reference OEHHA’s Tax Identification Number of 68-0284486 for this check); and (b) Burris Law Trust Account” in the amount of \$500 (for which Burris shall provide Defendant a completed IRS

² If Defendant elects to use this warning statement or the warning statement that follows it above, it may include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the Product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”. For units of the Products manufactured after August 31, 2018, inclusion of the symbol in the manner previously specified shall be mandatory.

Form W-9 with a tax identification number within two days following the Effective Date, if not beforehand). These checks shall be delivered to the addresses listed in Section 3.3 below.

3.2 Payment Delivery

(a) Payment to Burris shall be delivered to the following address:

Jason R. Burris
BURRIS LAW
1420 East Chapman Avenue
Orange, California 92866-2229

(b) Payment to OEHHA shall be delivered to one of the following addresses:

For United States Postal Service Delivery:

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

or

For Non-United States Postal Service Delivery:

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

4. REIMBURSEMENT OF FEES AND COSTS

Defendant shall pay Burris \$33,000 for fees and costs incurred as a result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in the public interest.

Defendant shall make its checks payable to Burris Law and shall deliver payment to the address listed in Section 3(a) above within ten (10) business days of the Effective Date. To facilitate timely payment, Burris shall provide Defendant with a completed IRS Form W-9 with Burris Law's tax identification number within two days following the Effective Date if not beforehand.

5. CLAIMS COVERED AND RELEASED

5.1 Burris's Public Release of Proposition 65 Claims

Burris, acting on his own behalf and in the public interest, releases Defendant, and its affiliated entities (including Flexon Industries Corp., Anderson Industries, Inc., and Flexwest

1 LLC), directors, officers, employees, and attorneys (“Defendant Releasees”), and each entity to
2 whom they directly or indirectly distribute or sell Products, including, but not limited to,
3 distributors, wholesalers, dealers, customers, retailers, franchisees, cooperative members,
4 licensors, and licensees (including, without limitation, Costco Wholesale Corporation)
5 (collectively, “Downstream Defendant Releasees”), from all claims for violations of
6 Proposition 65 based on exposures to the Chemicals from Products manufactured and packaged
7 by Defendant prior to the Effective Date.³

8 5.2 **Burris’s Private Releases of Claims**

9 Burris, in his individual capacity only, also provides a release herein to Defendant,
10 Defendant Releasees, and Downstream Defendant Releasees, which shall be effective as a full
11 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
12 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature,
13 character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged
14 or actual exposures to any of the chemicals listed under Proposition 65 (including but not limited
15 to the Listed Phthalates) in the Products. In this regard, Burris hereby acknowledges that he is
16 familiar with Section 1542 of the California Civil Code, which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
19 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
20 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

21 5.3 **Defendant’s Release of Burris**

22 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
24 Burris and his attorneys and other representatives for any and all actions taken or statements made
25 (or those that could have been taken or made) by Burris and his attorneys and other

26 _____
27 ³ Following the Effective Date, compliance with the terms of this Consent Judgment shall
28 be deemed compliance with Proposition 65 with respect to exposures to the Chemicals from the
Products.

representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against Defendant in this matter, or with respect to the Products.

6. **COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties unless the Parties mutually agree to extend that time period due to what they mutually agree are reasonably unforeseeable circumstances.

7. **SEVERABILITY**

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

8. **GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide written notice to Burris of any asserted change in the law and have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.

9. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement 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 Defendant:

David Rauch
President
U.S. Wire & Cable Corporation
One Flexon Plaza
Newark, NJ 07114

1 *With a copy to:*

2 Robert Falk
3 RFalk@mofo.com
4 Morrison & Foerster LLP
5 425 Market Street, 32nd Floor
6 San Francisco, CA 94105

7 **For Burris:**

8 Jason R. Burris
9 1420 East Chapman Avenue
10 Orange, California 92866-2229

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

13 10. **COUNTERPARTS; FACSIMILE SIGNATURES**

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

17 11. **POST EXECUTION ACTIVITIES**

18 Burris agrees to comply with the reporting form requirements referenced in Health &
19 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety
20 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement
21 manifested in this Consent Judgment. In furtherance of obtaining such approval, Burris shall file
22 and serve a noticed motion for approval of this Consent Judgment within sixty (60) days of its
23 execution by all Parties and assure that the Office of the California Attorney General is served
24 with said motion and all supporting papers at least forty-five (45) days prior to the scheduled
25 hearing thereon. Defendant agrees to support the entry of this Consent Judgment once such
26 motion has been filed.

27 12. **ENFORCEMENT**

28 Any Party may, after meeting and conferring, by motion or application for an order to
show cause before this Court, enforce the terms and conditions contained in this Consent
Judgment.

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
3 and upon entry, following at least twenty-one (21) days' notice to the Office of the Attorney
4 General, of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
5 application of any Party, which shall also be served on the Office of the California Attorney
6 General with at least twenty-one (21) days' notice, and the entry of a modified consent judgment
7 by the Court. Any Party seeking to modify this Consent Judgment shall attempt in good faith to
8 meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

9 **14. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agreed to all of the terms and conditions of this
12 Consent Judgment.

13
14 **AGREED TO:**

15 Date: April 13, 2018

16
17 By: 
18 Andrew Burris

14 **AGREED TO:**

15 Date: 4/16/18

16
17 By: 
18 David Rauch, President
19 U.S. Wire & Cable Corporation

20
21 **IT IS SO ORDERED:**

22
23 Dated: _____

Judge of the Superior Court