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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,

v.

LAMBRO INDUSTRIES, INC.,
LAMBRO-WEST INC.,
and LAMBRO INDUSTRIES
OF CALIFORNIA, INC.
Defendant.

Case No.:

CONSENT JUDGMENT

Judge:

Dept.:

Hearing Date:

Hearing Time:

Reservation #:

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Lambro Industries, Inc. and Lambro-West Inc., and Lambro Industries of California, Inc. (collectively, “Lambro” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Lambro is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed individuals to Di(2-ethylhexyl) phthalate (DEHP) from flexible hoses without providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity and cancer.

1.3 **Notices of Violation/Complaint.** On or about April 26, 2017, Ferreiro served Lambro and various public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in violation of Proposition 65 for failing to warn consumers and customers that flexible vinyl hoses exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On July 12, 2017, Ferreiro filed a complaint in the matter (the “Complaint”).

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

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

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means flexible vinyl hoses in all
10 sizes, including but not limited to LAM266403, that are manufactured, distributed and/or offered
11 for sale in California by Lambro, and that contain DEHP, Diisodecyl phthalate (DIOP), and/or
12 Diisononyl phthalate (DINP).

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 Commencing ninety (90) days after the Effective Date, Lambro shall not
17 manufacture, import, or purchase for sale in California any Covered Product that contains more
18 than 1,000 parts per million DEHP, DIOP, and/or DINP unless the Covered Product is accompanied
19 by the following warning: "WARNING: This product contains a chemical known to the State of
20 California to cause cancer, birth defects and other reproductive harm."

21 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
22 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
23 on the packaging or labeling and displayed with such conspicuousness, as compared with other
24 words, statements, or designs as to render it likely to be read and understood by an ordinary
25 individual under customary conditions of purchase or use. A warning may be contained in the same
26 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
27 concerning the use of the product and shall be at least the same size as those other safety warnings.
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1 **4. MONETARY TERMS**

2 **4.1 Initial Civil Penalty.** Lambro shall pay an Initial Civil Penalty of \$1,000.00
3 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
4 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
5 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the
6 penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

7 **4.1.1** Within ten (10) business days of the Effective Date, Lambro shall issue two
8 separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$750.00; and (b)
9 "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$250.00. Payment owed to
10 Ferreiro pursuant to this Section shall be delivered to the following payment address:

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

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

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010
22 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
27 1001 I Street
28 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.

4.2 Final Civil Penalty. One Hundred Twenty (120) days after the Effective Date,
Lambro shall make a Final Civil Penalty payment of \$1,000.00 on the same terms as set forth in

1 Section 4.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code of
2 Regulations, Section 3203(c), Ferreiro agrees that the Final Civil Penalty payment shall be waived
3 in its entirety if, on or before the Final Civil Penalty payment is due, an officer of Lambro provides
4 Plaintiff with a signed declaration certifying that all Covered Products it ships for sale or distributes
5 for sale in California as of the date of its certification are Reformulated Products or are marked
6 with the warnings required by this Consent Decree (hereinafter "Labeled Product") and that
7 Lambro will, to the best of its knowledge, continue to offer only Reformulated Products or Labeled
8 Products in California in the future. The option to provide a declaration certifying its complete
9 early reformulation or labeling of the Covered Products in lieu of making the Final Civil Penalty
10 payment otherwise required by this Section is a material term, and time is of the essence.

11 4.3 **Attorney Fees.** Lambro shall pay \$11,500.00 to Brodsky & Smith, LLC ("Brodsky
12 Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees and costs incurred as a
13 result of investigating, bringing this matter to Lambro's attention, litigating and negotiating and
14 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
15 Procedure section 1021.5. Payment shall be made within fourteen (14) business days of the
16 Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

17 **5. RELEASE OF ALL CLAIMS**

18 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
19 acting in the public interest, and Lambro, and its parents, shareholders, divisions, subdivisions,
20 subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and
21 assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly
22 or indirectly distribute or sell Covered Products, including but not limited to Wal-Mart Stores, Inc.,
23 Greschlers, Inc., True Value Company, all other manufacturers, suppliers, distributors, wholesalers,
24 customers, licensors, licensees retailers, franchisees, and cooperative members ("Downstream
25 Defendant Releasees"), of all claims for violations of Proposition 65 based on exposure to DEHP,
26 DIOP and/or DINP from Covered Products as set forth in the Notice, with respect to any Covered
27 Products manufactured, distributed, or sold by Lambro prior to one hundred twenty (120) days after
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1 the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance
2 with Proposition 65 with regard to the Covered Products.

3 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
4 agents, heirs, administrators, representatives, attorneys, and successors and/or assignees, and not in
5 his representative capacity, hereby waives all rights to institute or participate in, directly or
6 indirectly, any form of legal action and releases any Lambro, Defendant Releasees, and
7 Downstream Defendant Releasees from any and all manner of actions, causes of action, claims,
8 demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages,
9 charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown,
10 in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of
11 Proposition 65 related to or arising from Covered Products manufactured distributed or sold by
12 Lambro or Defendant Releasees. With respect to the foregoing waivers and releases in this
13 paragraph, Ferreiro hereby specifically waives any and all rights and benefits which he now has, or
14 in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil
15 Code, which provides as follows:

16
17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
19 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
THE DEBTOR.

20 5.3 Lambro waives any and all claims against Ferreiro, his attorneys and other
21 representatives, for any and all actions taken or statements made (or those that could have been
22 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
23 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
24 and/or with respect to Covered Products.

25 **6. INTEGRATION**

26 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
27 any and all prior negotiations and understandings related hereto shall be deemed to have been
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1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier; and/or by
13 email on any party by the other party at the following addresses:

14 For Defendant:

15 Howard Gilbert
16 Gilbert Law Group
17 425 Broadhollow Road, Suite 405
18 Melville, NY 11747-4701
HEGILBERT@gilbertlegal.net

18 And

19 For Ferreiro:

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

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

26 9.1 This Consent Judgment may be executed in counterparts, by facsimile, or pdf each
27 of which shall be deemed an original, and all of which, when taken together, shall constitute one
28 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 Defendant 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 Each party agrees to bear its own attorney's fees and costs.

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

21 **13. RETENTION OF JURISDICTION**

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

24 **14. AUTHORIZATION**

25 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
26 respective Parties and have read, understood and agree to all of the terms and conditions of this
27 document and certifies that he or she is fully authorized by the Party he or she represents to execute
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1 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
2 explicitly provided herein each Party is to bear its own fees and costs.

3
4 **AGREED TO:**

5 Date: 8/11/17
6
7 By: Anthony Ferreiro
8 ANTHONY FERREIRO

9 **AGREED TO:**

10 Date: JULY 13, 2017
11 By: [Signature]
12 LAMBRO INDUSTRIES, INC.,
13 LAMBRO-WEST, INC., and
14 LAMBRO INDUSTRIES OF
15 CALIFORNIA, INC.

16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17 Dated: _____
18 _____
19 Judge of Superior Court