

1 Evan Smith (Bar No. SBN 242352)  
2 BRODSKY & SMITH, LLC.  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212  
5 Tel: (877) 534-2590  
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 SAN JAMAR, INC.,

15 Defendant.

Case No.: RG18919771

**CONSENT JUDGMENT**

Judge: Stephen Pulido

Dept.: 517

Hearing Date: April 25, 2019

Hearing Time: 3:00 PM

Reservation #: R-2040853

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 San Jamar, Inc. (“San  
4           Jamar” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and  
5           each of them as a “Party.” Ferreiro is an individual residing in California and alleges that he 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. San Jamar is alleged to be a  
8           person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
9           §§ 25249.6 et seq.

10           1.2     **Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11           individuals to bisphenol A (BPA) from its sales of Rapi-Kool Chillers/Cold Paddles without  
12           providing a clear and reasonable exposure warning under Proposition 65. BPA is listed under  
13           Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

14           1.3     **Notice of Violation/Complaint.** On or about September 7, 2017, Ferreiro served  
15           San Jamar, 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 Defendant  
17           violated Proposition 65 for failing to warn consumers and customers that use of Rapi-Kool  
18           Chillers/Cold Paddles expose users in California to BPA. No public enforcer has brought and is  
19           diligently prosecuting the claims alleged in the Notice. On September 7, 2018, Ferreiro filed a  
20           complaint (the “Complaint”) in the matter.

21           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22           jurisdiction over Defendant 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 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 Rapi-Kool Chillers/Cold  
10 Paddles that are manufactured, distributed and/or offered for sale in California by San Jamar

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 **Reformulation of Covered Products.** As of the Effective Date, and continuing  
15 thereafter, Covered Products that San Jamar directly manufactures, imports, distributes, sells, or  
16 offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or  
17 (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For  
18 purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in  
19 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3  
20 and 3.4 shall not apply to any Reformulated Product.

21           3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products  
22 whose BPA content is below the level of detection when analyzed pursuant to ATS 367 Rev. 0 by  
23 LC/MS/MS or any other methodology utilized by federal or state government agencies for the  
24 purpose of determining the BPA content in a solid substance.

25           3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing  
26 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be  
27 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or  
28

1 offers for sale in California that is not a Reformulated Product. There shall be no obligation for  
2 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to  
3 the date this Consent Judgment is signed by both Parties. The warning shall consist of either the  
4 **Warning or Alternative Warning** described in §§ 3.3(a) or (b), respectively:

5 (a) **Warning.** The “Warning” shall consist of the statement:

6 **⚠ WARNING:** This product can expose you to chemicals including bisphenol A  
7 (BPA), which is known to the State of California to cause birth defects or other  
8 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

9 or

10 **⚠ WARNING:** This product can expose you to chemicals including BPA, which  
11 is known to the State of California to cause birth defects or other reproductive harm.  
12 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

13 (b) **Alternative Warning:** San Jamar may, but is not required to, use the alternative  
14 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

15 **⚠ WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

16 3.4 A **Warning or Alternative Warning** provided pursuant to § 3.3 must print the word  
17 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
18 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
19 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
20 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
21 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
22 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
23 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
24 with other words, statements, or designs as to render it likely to be read and understood by an  
25 ordinary individual under customary conditions of purchase or use. A warning may be contained  
26 in the same section of the packaging, labeling, or instruction booklet that states other safety  
27 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
28 those other safety warnings.

1           3.5     **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
2 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
3 Judgment or by complying with warning requirements adopted by the State of California’s Office  
4 of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

5     **4.     MONETARY TERMS**

6           4.1     **Civil Penalty.** San Jamar shall pay \$2,000.00 as a Civil Penalty pursuant to Health  
7 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
8 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
9 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

10           4.1.1    Within ten (10) business days of the receipt by San Jamar of the order  
11 approving entry of this Consent Judgment and the entered Consent Judgment, San Jamar shall  
12 issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of  
13 \$1,500.00; and to (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$500.00.  
14 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment  
15 address:

16           Evan J. Smith, Esquire  
17           Brodsky & Smith, LLC  
18           Two Bala Plaza, Suite 510  
19           Bala Cynwyd, PA 19004

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

22           For United States Postal Service Delivery:

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

28           For Non-United States Postal Service Delivery:

          Mike Gyurics  
          Fiscal Operations Branch Chief  
          Office of Environmental Health Hazard Assessment  
          1001 I Street

1 Sacramento, CA 95814

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

4 4.2 **Attorneys' Fees.** Within ten (10) business days of receipt by San Jamar of the order  
5 approving entry of this Consent Judgment and the entered Consent Judgment, San Jamar shall pay  
6 \$18,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's  
7 attorneys' fees and costs incurred as a result of investigating, bringing this matter to San Jamar'  
8 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
9 interest, pursuant to Code of Civil Procedure section 1021.5.

10 **5. RELEASE OF ALL CLAIMS**

11 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
12 acting on his own behalf, and on behalf of the public interest, and San Jamar, and its parents,  
13 shareholders, members, directors, officers, managers, employees, representatives, agents,  
14 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
15 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
16 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
17 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
18 retailers, franchisees, and cooperative members, including but not limited to Surf, Incorporated  
19 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to BPA  
20 from Covered Products as set forth in the Notice, with respect to any Covered Products  
21 manufactured, distributed, or sold by San Jamar, Defendant Releasees, and/or Downstream  
22 Releasees prior to the Effective Date. This Consent Judgment shall have preclusive effect such that  
23 no other person or entity, whether purporting to act in his, her, or its interests or the public interest  
24 shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65  
25 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against  
26 San Jamar, Defendant Releasees, and/or the Downstream Releasees of the Covered Products  
27 ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment constitutes  
28 compliance with Proposition 65 with regard to the Covered Products.

1           5.2     In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
2 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
4 legal action and releases San Jamar, Defendant Releasees, and Downstream Releasees from any  
5 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
9 from Covered Products manufactured, distributed, or sold by San Jamar, Defendant Releasees or  
10 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
11 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the  
12 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
13 provides as follows:

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

19           5.3     San Jamar waives any and all claims against Ferreiro, his attorneys and other  
20 representatives, for any and all actions taken or statements made (or those that could have been  
21 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
23 and/or with respect to Covered Products.

24           **6.     INTEGRATION**

25           6.1     This Consent Judgment contains the sole and entire agreement of the Parties and  
26 any and all prior negotiations and understandings related hereto shall be deemed to have been  
27 merged within it. No representations or terms of agreement other than those contained herein exist  
28 or have been made by any Party with respect to the other Party or the subject matter hereof.

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

**7. GOVERNING LAW**

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

**8. NOTICES**

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

For Defendant:

Jay W. Connolly  
Seyfarth Shaw LLP  
560 Mission Street  
Suite 3100  
San Francisco, California 94105-2930

And

For Ferreiro:

Evan Smith  
Brodsky & Smith, LLC  
9595 Wilshire Blvd., Ste. 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.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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           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    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.

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

22          **13. RETENTION OF JURISDICTION**

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

25          **14. AUTHORIZATION**

26          14.1    The undersigned are authorized to execute this Consent Judgment on behalf of their  
27          respective Parties and have read, understood and agree to all of the terms and conditions of this  
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

document and certify 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: 3/1/19

Date: 11-08-18

By: Anthony Ferreiro  
ANTHONY FERREIRO

By: Peter Ash  
SAN JAMAR, INC.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court