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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 PONTE VEDRA GIFTS AND ACCESSORIES  
15 COMPANY, LLC,

16 Defendant.

Case No.: RG18906593

**CONSENT JUDGMENT**

Judge: Evelio Grillo

Dept.: 15

Hearing Date: September 11, 2018

Hearing Time: 3:00 PM

Reservation #: R-1984960

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

10           **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11       individuals to di(2-ethylhexyl) phthalate (DEHP) from Automotive Detailing Kits without  
12       providing clear and reasonable warnings under Proposition 65. DEHP is listed under Proposition  
13       65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

14           **1.3 Notices of Violation/Complaint.** On or about December 19, 2017, Ferreiro served  
15       Grease Monkey International, Inc., Grease Monkey International, LLC (collectively, “Grease  
16       Monkey”), Kohl’s Corp., Kohl’s Department Stores, Inc. (collectively, “Kohl’s”), and various  
17       public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to  
18       Health & Safety Code §25249.7(d) (the “December Notice”), alleging that Kohl’s and Grease  
19       Monkey were in violation of Proposition 65 for failing to warn consumers and customers that  
20       Grease Monkey Automotive Detailing Kits exposed users in California to DEHP. On February 28,  
21       2018, a revised “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) was  
22       mailed to Defendant (the “February Notice”) in order to provide Ponte Vedra Gifts & Accessories  
23       with identical notice of violation with respect to the Grease Monkey Auto Detailing Kits. The  
24       December Notice and February Notice are collectively referred to herein as, the “Notice.” No  
25       public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May  
26       29, 2018, Ferreiro filed a complaint (the “Complaint”) in the matter.

27           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
28

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

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

13 **2. DEFINITIONS**

14 2.1 **Covered Products.** The term "Covered Products" means Auto Detailing Kits  
15 containing DEHP that are manufactured, distributed and/or offered for sale in California by Ponte  
16 Vedra Gifts & Accessories or offered for sale in or into California by retailers to whom Ponte Vedra  
17 Gifts & Accessories sold such products.

18 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
19 entered as a Judgment of the Court.

20 **3. INJUNCTIVE RELIEF: WARNINGS**

21 3.1 As of the date this Consent Judgment is signed by both Parties, Ponte Vedra Gifts  
22 & Accessories shall not manufacture or order from any supplier any Covered Products intended for  
23 retail sale in California that contains DEHP on any component to which consumers are exposed in  
24 excess of 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Covered Product is  
25 accompanied by a warning that complies with Article 6 of Title 27 of the California Code of  
26 Regulations when offered for sale in or into California. Covered Products sold or distributed by  
27 Ponte Vedra Gifts & Accessories before the date this Consent Judgment is signed by both Parties  
28

1 may be sold by Downstream Releasees (defined below) without a warning even if not Reformulated  
2 Products. Until August 30, 2018 (when required hereunder), the warning shall consist of either:

3 (a) The statement: "WARNING: This product contains a chemical known to the State  
4 of California to cause cancer and birth defects or other reproductive harm."; or (b)(1) A  
5 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold  
6 black outline to the left of the word "warning" in bold all capital letters, followed by the  
7 statement "This product can expose you to chemicals including Di(2-ethylhexyl) phthalate  
8 (DEHP), which is known to the State of California to cause cancer and birth defects or other  
9 reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)"; or (2) a  
10 warning consisting of a symbol that is a black exclamation point in a yellow equilateral  
11 triangle with a bold black outline to the left of the word "warning" in bold all capital letters,  
12 followed by the statement "Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)."<sup>1</sup>

13 For products manufactured on and after August 30, 2018, the warning set forth in Section 3.1(b)  
14 shall be used.

15 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the  
16 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
17 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
18 with other words, statements, or designs as to render it likely to be read and understood by an  
19 ordinary individual under customary conditions of purchase or use. A warning may be contained  
20 in the same section of the packaging, labeling, or instruction booklet that states other safety  
21 warnings, if any, concerning the use of the product and shall be at least the same size as those other  
22 safety warnings.

#### 23 4. MONETARY TERMS

24 4.1 **Civil Penalty.** Ponte Vedra Gifts & Accessories shall pay a Civil Penalty of  
25 \$2,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance  
26

27 <sup>1</sup> The triangular symbol need only be in yellow where the sign, label, shelf tag or other  
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of  
2 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
3 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
4 § 25249.12(d).

5           4.1.1 Within fourteen (14) days of the Effective Date, Ponte Vedra Gifts &  
6 Accessories shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the  
7 amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of  
8 \$500.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following  
9 payment address:

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

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

16           For United States Postal Service Delivery:

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

22           For Non-United States Postal Service Delivery:

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

28 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     **Attorney Fees.** Within fourteen (14) days of the Effective Date, Ponte Vedra Gifts  
& Accessories shall pay \$18,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete  
reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing

1 this matter to Ponte Vedra Gifts & Accessories' attention, litigating and negotiating and obtaining  
2 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section  
3 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
6 acting on his own behalf, and on behalf of the public interest, and Ponte Vedra Gifts & Accessories,  
7 and its parents, shareholders, members, directors, officers, managers, employees, representatives,  
8 agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,  
9 and their predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom  
10 they obtain or to whom they directly or indirectly distribute or sell Covered Products, including but  
11 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
12 retailers, franchisees, and cooperative members including without limitation Grease Monkey and  
13 Kohl's ("Downstream Releasees"), of all claims for violations of Proposition 65 that were or could  
14 have been or could later be asserted against Defendant Releasees or Downstream Releasees based  
15 on exposure to DEHP from Covered Products or failure to warn as set forth in the Notice, with  
16 respect to any Covered Products (i) manufactured, distributed, or sold by Ponte Vedra Gifts &  
17 Accessories prior to the Effective Date or (ii) sold or distributed by Downstream Releasees after  
18 the Effective Date (but which were acquired by any such parties prior to the Effective Date). This  
19 Consent Judgment shall have preclusive effect such that no other person or entity, whether  
20 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or  
21 take any action with respect to any violation of Proposition 65 that was alleged in the Complaint,  
22 or that could have been brought pursuant to the Notice against Defendant Releasees, Ponte Vedra  
23 Gifts & Accessories or its Downstream Releasees of the Product including but not limited to Kohl's  
24 and Grease Monkey ("Proposition 65 Claims"). Compliance with the terms of this Consent  
25 Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

26 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
27 agents, representatives, attorneys, and successors and/or assignees, and not in his representative  
28

1 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
2 legal action and releases Ponte Vedra Gifts & Accessories, Defendant Releasees, and Downstream  
3 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,  
4 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,  
5 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed  
6 or contingent, now or in the future, with respect to Covered Products manufactured, distributed, or  
7 sold by Ponte Vedra Gifts & Accessories, Defendant Releasees or Downstream Releasees. With  
8 respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby specifically waives  
9 any and all rights and benefits which he now has, or in the future may have, conferred by virtue of  
10 the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

16 5.3 Ponte Vedra Gifts & Accessories waives any and all claims against Ferreiro, his  
17 attorneys and other representatives, for any and all actions taken or statements made by Ferreiro  
18 and his attorneys and other representatives, whether in the course of investigating claims or  
19 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to  
20 Covered Products.

## 21 6. INTEGRATION

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

## 26 7. GOVERNING LAW

27 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
28 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 or the

1 listed chemical, then Defendant shall have no further obligations pursuant to this Consent Judgment  
2 with respect to, and to the extent that, Covered Products are so affected. If Proposition 65 or  
3 associated regulations are amended to require or allow different text, font, and/or methods of  
4 warning than specified above, Ponte Vedra Gifts & Accessories, after providing written notice to  
5 Ferreiro, may substitute such text, font, and/or methods of warning for product warnings required  
6 under this Consent Judgment.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided  
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
11 by the other party at the following addresses:

12 For Defendant:

13 Ponte Vedra Gifts and Accessories Company, LLC  
14 c/o Jesse S. McIntyre, P.A.  
15 105 Solana Road, Suite B  
16 Ponte Vedra Beach, FL 32082

17 and

18 Jeffrey Parker  
19 Sheppard Mullin Richter & Hampton LLP  
20 333 South Hope Street, 43rd Floor  
21 Los Angeles, CA 90071-1422

22 And

23 For Ferreiro:

24 Evan Smith  
25 Brodsky & Smith, LLC  
26 9595 Wilshire Blvd., Ste. 900  
27 Beverly Hills, CA 90212

28 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.



1       **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2           9.1     This Consent Judgment may be executed in counterparts and by facsimile, each of  
3     which shall be deemed an original, and all of which, when taken together, shall constitute one and  
4     the same document.

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

7           10.1    Ferreiro agrees to comply with the requirements set forth in California Health &  
8     Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
9     Defendant agrees it shall support approval of such Motion.

10          10.2    This Consent Judgment shall not be effective until it is approved and entered by the  
11     Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
12     the Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
13     30 days, the case shall proceed on its normal course.

14          10.3    If the Court approves this Consent Judgment and is reversed or vacated by an  
15     appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
16     Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
17     its normal course on the trial court's calendar.

18       **11. MODIFICATION**

19          11.1    This Consent Judgment may be modified only by further stipulation of the Parties  
20     and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21       **12. ATTORNEY'S FEES**

22          12.1    A party who unsuccessfully brings or contests an action arising out of this Consent  
23     Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24          12.2    Nothing in this Section shall preclude a Party from seeking an award of sanctions  
25     pursuant to law.

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
6 respective Parties and have read, understood and agree to all of the terms and conditions of this  
7 document and certify that he or she is fully authorized by the Party he or she represents to execute  
8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
9 explicitly provided herein each Party is to bear its own fees and costs.

10 **AGREED TO:**

11  
12  
13 Date: 7/23/18  
14 By: Anthony Ferreiro  
15 ANTHONY FERREIRO

**AGREED TO:**

16 Date: 7/17/18  
17 Adam Tormollan  
18 PONTE VEDRA GIFTS &  
19 ACCESSORIES COMPANY, LLC  
20 By: Adam Tormollan  
21 Its: CFO

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

23  
24  
25 Dated: \_\_\_\_\_

26 \_\_\_\_\_  
27 Judge of Superior Court  
28