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9 *Attorneys for Plaintiff*
10 ANTHONY FERREIRO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,
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13 Plaintiff,
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15 v.
16
17 BLACK-HAWK, INC.,
18
19 Defendant.

Case No.: RG19007586

**[PROPOSED] CONSENT
JUDGMENT**

Judge: The Hon. Julia Spain
Dept.: 520
Hearing Date: May 8, 2019
Hearing Time: 2:00 PM
Reservation #: R-2059240

Complaint filed February 20, 2019

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 Black-Hawk, Inc.
4 (“Black-Hawk” or “Defendant”) with Ferreiro and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California that 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. Black-Hawk 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 di(2-ethylhexyl) phthalate (“DEHP”) from its sales of Tite-Lok rod holders without
12 providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed
13 under Proposition 65 as a chemical known to the State of California to cause cancer and
14 reproductive toxicity.

15 1.3 **Notice of Violation/Complaint.** On or about October 29, 2018, Ferreiro served
16 Black-Hawk and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of Tite-Lok rod
19 holders expose users in California to DEHP. No public enforcer has brought and is diligently
20 prosecuting the claims alleged in the Notice. On February 20, 2019, Ferreiro filed a complaint (the
21 “Complaint”) in the matter.

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means all sizes, models and
11 packaging of Tite-Lok rod holders that are either manufactured, and/or distributed and/or offered
12 for sale in California by Black-Hawk.

13 2.2 **Effective Date.** The term “Effective Date” means the date Plaintiff serves notice
14 that this Consent Judgment has been entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
17 thereafter, Covered Products that Black-Hawk directly either manufactures, and/or imports, and/or
18 distributes, and/or sells, or offers for sale in California shall either: (a) be Reformulated Products
19 pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant
20 to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated Product” is a
21 Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning
22 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

23 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of DEHP when
25 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
26 8270C or other methodology utilized by federal or state government agencies for the purpose of
27 determining the phthalate content in a solid substance.

1 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
2 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
3 provided for all Covered Products that Defendant either manufacturers, and/or imports, and/or
4 distributes, and/or sells, or offers for sale in California that is not a Reformulated Product. There
5 shall be no obligation for Defendant or any other person to provide a warning for Covered Products
6 that enter the stream of commerce prior to the Effective Date. The warning shall consist of either
7 the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively, at Defendant’s
8 election:

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

10 △ **WARNING:** This product can expose you to chemicals including di(2-
11 ethylhexyl) phthalate, which is known to the State of California to cause cancer and
12 birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

13 (b) **Alternative Warning:** Black-Hawk 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:** Cancer and Reproductive Harm - 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, or on the Covered Product’s packaging or labeling, or on a placard, shelf tag,
23 sign or electronic device or automatic process, providing that the warning is displayed with such
24 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
25 read and understood by an ordinary individual under customary conditions of purchase or use. A
26 warning may be contained in the same section of the packaging, labeling, or instruction booklet
27 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at
28 least the same size as those other safety warnings.

1 If Black-Hawk sells Covered Products via its proprietary internet website to customers
2 located in California, the warning requirements of this section shall be satisfied if the foregoing
3 warning appears either: (a) on the same web page on which a Covered Product is displayed and/or
4 described; (b) on the same page as the price for the Covered Product; or (c) on one or more web
5 pages displayed to a California purchaser prior to completion of the checkout process.
6 Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral
7 triangle may appear adjacent to or immediately following the display, description, price, or
8 checkout listing of the Covered Product, if the warning statement appears elsewhere on the same
9 web page in a manner that clearly associates it with the product(s) to which the warning applies.

10 **3.5 Compliance with Warning Regulations.** Defendant and the Covered Products
11 shall be deemed to be in compliance with this Consent Judgment by either adhering to §§ 3.2, or
12 3.3 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the
13 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and in effect
14 on and after the Effective Date.

15 **4. MONETARY TERMS**

16 **4.1 Civil Penalty.** Black-Hawk shall pay \$1,500.00 as a Civil Penalty pursuant to
17 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
18 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
19 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
20 § 25249.12(d).

21 **4.1.1** Within ten (10) days of the Effective Date, Black-Hawk shall issue two
22 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,125.00; and
23 to (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$375.00. Payment owed to
24 Ferreiro pursuant to this Section shall be delivered to the following payment address:

25 Evan J. Smith, Esquire
26 Brodsky & Smith, LLC
27 Two Bala Plaza, Suite 510
28 Bala Cynwyd, PA 19004.

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814.

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

17 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Black-Hawk shall pay
18 \$15,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's
19 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Black-Hawk's
20 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
21 interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
24 acting on his own behalf, and on behalf of the public interest, and Black-Hawk, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates (including
27 Universal Consolidated Methods, Inc.), and their predecessors (including Tite-Lok), successors and
28 assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly
or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
cooperative members (including American Sportsman Holding Co., Bass Pro Group, LLC, BPS

1 Direct, LLC and Bass Pro LLC) (“Downstream Releasees”), of all claims for violations of
2 Proposition 65 based on exposure to DEHP from Covered Products as set forth in the Notice and
3 Complaint, with respect to any Covered Products either manufactured, distributed, or sold by
4 Black-Hawk prior to the Effective Date. This Consent Judgment shall have preclusive effect such
5 that no other person or entity, whether purporting to act in his, her, or its interests or the public
6 interest shall be permitted to pursue and/or take any action with respect to any violation of
7 Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the
8 Notice against Black-Hawk and/or any Defendant Releasee or the Downstream Releasees of the
9 Covered Products (“Proposition 65 Claims”). Defendant’s Compliance with the terms of this
10 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

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

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
27 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
28 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

1 5.3 Black-Hawk waives any and all claims against Ferreiro, his attorneys and other
2 representatives, for any and all actions taken or statements made by Ferreiro and his attorneys and
3 other representatives, whether in the course of investigating claims or otherwise seeking
4 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products up
5 through the Effective Date.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
8 any and all prior negotiations and understandings related hereto shall be deemed to have been
9 merged within it. No representations or terms of agreement other than those contained herein exist
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, or registered or certified mail return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendant:

23 Judith M. Praitis
24 Sidley Austin LLP
25 555 West Fifth St.
26 Los Angeles, CA 90013

23 Donald Weldy II, President
24 Black-Hawk, Inc.
25 P.O. Box 476
26 Bristol, IN 46507

27 And For Ferreiro:

27 Evan Smith
28 Brodsky & Smith, LLC
 9595 Wilshire Blvd., Ste. 900

1 Beverly Hills, CA 90212.

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

4 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

5 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
6 which shall be deemed an original, and all of which, when taken together, shall constitute one and
7 the same document.

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

10 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
11 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
12 Defendant agrees it shall not object to approval of such Motion.

13 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
14 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
15 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
16 30 days, the case shall proceed on its normal course.

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

21 **11. MODIFICATION**

22 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
23 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

24 **12. ATTORNEY'S FEES**

25 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
26 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

27 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
28 pursuant to law.

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13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment. This Consent Judgment shall be enforced exclusively by the Parties hereto.

14. AUTHORIZATION

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

Date: _____

By: _____
ANTHONY FERREIRO

By: _____
Donald Weldy II President
BLACK-HAWK, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

240671270v.3

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9 explicitly provided herein each Party is to bear its own fees and costs.

10 **AGREED TO:**

AGREED TO:

11
12 Date: 3/20/19

Date: 3/5/19

13
14 By: Anthony Ferreiro
15 ANTHONY FERREIRO

By: Donald Weldy II President
Donald Weldy II President
BLACK-HAWK, INC.

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

18
19 Dated: _____

Judge of Superior Court

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21 240671270v.3