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

11 ANTHONY FERREIRO,
12 Plaintiff,
13 v.
14 MANN & BROS., INC.,
15 Defendant.

Case No.: RG19044515
CONSENT JUDGMENT
Judge: Ronni B. MacLaren
Dept.: 25
Hearing Date: March 11, 2020
Hearing Time: 9:00 AM
Reservation #: R-2153636

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

10 1.2 **Allegations.** Ferreiro alleges that Defendant has exposed California consumers to
11 di(2-ethylhexyl) phthalate (“DEHP”) from its manufacture, distribution, and/or sale of seat
12 covers/cases and steering wheel covers under its own brands and under brands licensed to it by
13 others including, but not limited to, Wolverine North America, Inc. (“Wolverine”), without
14 providing a clear and reasonable warning pursuant to Proposition 65. DEHP is listed under
15 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive
16 toxicity.

17 1.3 **Notices of Violation/Complaint.** On or about August 8, 2018, Ferreiro served Ross
18 Stores, Inc. (“Ross”), Wolverine, and various public enforcement agencies with documents entitled
19 “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “August NOV”),
20 alleging that Ross and Wolverine violated Proposition 65 by failing to warn California consumers
21 that the use of car seat covers/cases sold by Wolverine and/or Ross exposed users in California to
22 DEHP. On October 8, 2018, the August NOV was amended (the “October NOV”) to add Imperial
23 Handkerchiefs (“IH”) in order to provide IH with notice that its alleged manufacture and/or sale of
24 seat covers/cases to Wolverine and/or Ross caused California customers to be exposed to DEHP
25 without a Proposition 65 warning. Thereafter, on December 3, 2018, the October NOV was
26 amended a second and final time in order to add Mann and provide Notice of Violation that Mann’s
27 manufacture and/or sale of seat covers/cases and steering wheel covers to Wolverine and/or Ross
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1 (the “December 2018 NOV”) caused California consumers to be exposed to DEHP without a
2 Proposition 65 warning. The August NOV, the October NOV, and the December NOV are
3 collectively referred to herein as the “Notices.” Mann manufactured and/or sold all of the seat
4 covers/cases and steering wheel covers supplied to both Wolverine and/or Ross that are covered by
5 the Notices. No public enforcer has brought and is diligently prosecuting the claims alleged in the
6 Notices. On November 21, 2019, Ferreiro filed a complaint (the “Complaint”) based on the Notices.

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8 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
9 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
10 in the County of Alameda, and that this Court has jurisdiction to approve, enter, and oversee the
11 enforcement of this Consent Judgment as a full and final binding resolution in the public interest
12 of all claims which were or could have been raised in the Complaint based on the facts alleged
13 therein and/or in the Notices.

14 1.5 Defendant enters this Consent Judgment solely to avoid prolonged and costly
15 litigation. Defendant denies the material factual and legal allegations contained in the Notices and
16 Complaint, and maintains that, to the best of its knowledge, all products that it has sold and
17 distributed in California, including the products covered by the Notices and Complaint, have been
18 and are in compliance with all laws, and are completely safe for their intended use. Nothing in this
19 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of
20 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed
21 as an admission by Defendant of any fact, finding, conclusion, issue of law or violation of law, such
22 being specifically denied by Defendant. However, this Section 1.5 shall not diminish or otherwise
23 affect the Parties’ obligations, responsibilities and duties under this Consent Judgment.
24 Notwithstanding the allegations in the Notices and Complaint, Defendant maintains that it has not
25 knowingly manufactured, or caused to be manufactured, the Covered Products for sale in California
26 in violation of Proposition 65.

27 **2. DEFINITIONS**

28 2.1 **Covered Products.** The term “Covered Products” means all seat covers/cases and

1 steering wheel covers that Mann manufactures, distributes and/or offers for sale in California
2 whether under the Wolverine or other licensed brands, or its own brands. Covered Products that are
3 steering wheel covers include, but are not limited to, Wolverine Universal Steering Wheel Covers
4 UPC Nos. 400178679280, 400178679419, 400186638552, and 400178678887.

5 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
6 entered as a Judgment of the Court.

7 **3. INJUNCTIVE RELIEF: WARNINGS**

8 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
9 thereafter, Covered Products that Mann manufactures, imports, distributes, sells, or offers for sale
10 in California shall either be: (1) Reformulated Products pursuant to § 3.2, below; or (2) labeled with
11 a clear and reasonable warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent
12 Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the
13 reformulation standard set forth in § 3.2 below. The warning requirements set forth in §§ 3.3 and
14 3.4 shall not apply to any Reformulated Product.


15 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
16 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) each of DEHP,
17 dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”), diisodecyl phthalate (“DIDP”), di-n-
18 hexyl phthalate (“DnHP”), and butyl benzyl phthalate (“BBP”), in any accessible components
19 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
20 and 8270C, or other methodologies utilized by federal or state government agencies for the purpose
21 of determining the phthalate content in a solid substance.

22 3.3 **Clear and Reasonable Warnings.** As of the Effective Date, and continuing
23 thereafter, a clear and reasonable warning as set forth in this §§ 3.3 and 3.4 must be provided for
24 all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in
25 California that are not Reformulated Products. There shall be no obligation for Defendant to
26 provide a warning for any Covered Products that are manufactured or otherwise enter the stream
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1 of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or
2 **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

3 (a) **Warning.** The “Warning” shall consist of one of the following statements:

4  [California Proposition 65] **WARNING:** This product can expose you to
5 chemicals including di(2-ethylhexyl) phthalate (DEHP), which are known to the
6 State of California to cause cancer and birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov.

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

9  [California Proposition 65] **WARNING:** Cancer and Reproductive Harm -
10 www.P65Warnings.ca.gov.

11 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
12 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
13 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
14 triangle with a black outline, except that if the sign or label for the Covered Product does not use
15 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
16 than the height of the word “**WARNING:**”. Language in brackets above is optional. The warning
17 shall be affixed to or printed on the Covered Product’s packaging, its container, instruction booklet,
18 or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, displayed with
19 such conspicuousness, as compared with other words, statements, or designs, as to render it likely
20 to be read and understood by an ordinary individual under customary conditions of purchase or use.
21 A warning may be contained in the same section of the packaging, labeling, or instruction booklet
22 that states other safety warnings, if any, concerning the use of the Covered Product, and shall be at
23 least the same size as those other safety warnings.

24 If Mann sells Covered Products via its internet website to customers located in California,
25 the warning requirements of this section shall be satisfied if one of the foregoing warnings or a
26 clearly marked hyperlink to the warning using the word(s) “[California Proposition 65]
27 **WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a
28 Covered Product is displayed and/or described; (b) on the same web page as the price for the

1 Covered Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during
2 the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow
3 or white equilateral triangle may appear adjacent to or immediately following the display,
4 description, price, or checkout listing of the Covered Product, if the warning statement appears
5 elsewhere on the same web page in a manner that clearly associates it with the product(s) to which
6 the warning applies.

7 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
8 compliance with this Consent Judgment for Covered Products that are nor Reformulated Products
9 by either adhering to §§ 3.3 and 3.4 of this Consent Judgment, or by complying with any warning
10 requirements adopted by the State of California’s Office of Environmental Health Hazard
11 Assessment (“OEHHA”) after the Effective Date.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** In complete resolution of any claim for monetary relief of any kind
14 related to the Notices, the Complaint, and this Consent Judgment (except Plaintiff’s attorney’s fees
15 as set forth in Section 4.2 below), Mann shall pay a total of \$2,000 as a Civil Penalty pursuant to
16 Health and Safety Code section 25249.7(b), with 75% of the Civil Penalty remitted to OEHHA and
17 the remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health &
18 Safety Code § 25249.12.

19 **4.1.1** Within ten (10) days of the Effective Date, Mann shall send two separate
20 checks for the Civil Penalty payment to: (a) “OEHHA” in the amount of \$1,500; and (b)
21 “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$500. Payment owed to Ferreiro
22 pursuant to this Section shall be delivered to the following payment address:

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

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

 For United States Postal Service Delivery:

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

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

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

14 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Mann shall send a
15 check for a total of \$20,000 made payable to Brodsky & Smith, LLC ("Brodsky Smith") as
16 complete reimbursement and resolution of any claim for Ferreiro's attorneys' fees and costs or
17 other expenses of any kind incurred in connection with the Notices, the Complaint, and this Consent
18 Judgment, as a result of activities including but not limited to investigating, testing, bringing this
19 matter to Mann's attention, litigating, negotiating, and obtaining judicial approval of this Consent
20 Judgment in the public interest pursuant to Code of Civil Procedure § 1021.5, and any other statute
21 or common law of similar effect.

22 **5. PUBLIC 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 Mann, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
28 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors (including
but not limited to Wolverine North America, Inc. and its affiliates), licensees, retailers (including
but not limited to Ross Stores, Inc. and its affiliates), franchisees, and cooperative members, and

1 each of their parents, shareholders, members, directors, officers, managers, employees,
2 representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies,
3 and affiliates, and their predecessors, successors and assigns (collectively "Releasees"), of all
4 claims for actual or alleged violations of Proposition 65 based on exposure to DEHP from Covered
5 Products as set forth in the Notices and the Complaint, with respect to any Covered Products
6 manufactured, distributed, or sold by Mann prior to the Effective Date. This Consent Judgment
7 shall have preclusive effect such that no other person or entity, whether purporting to act in his,
8 her, or its interests, or in the public interest, shall be permitted to pursue and/or take any action with
9 respect to any violation of Proposition 65 that was alleged in the Notices and/or the Complaint, or
10 that could have been brought pursuant to the Notices and/or Complaint against Mann, the
11 Defendant Releasees, and/or the Releasees for the manufacture, distribution, or sale of the Covered
12 Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment
13 constitutes compliance with Proposition 65 regarding the Covered Products.

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

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

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, and
4 successors and/or assignees, expressly waives and relinquishes any and all rights and benefits that
5 he or they may have under, or that may be conferred upon them by, the provisions of Civil Code
6 section 1542 as well as under any other state or federal statute or common law principle of similar
7 effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the
8 released matters.

9 5.3 Mann waives any and all claims against Ferreiro, his attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
12 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
13 and/or with respect to Covered Products.

14 **6. INTEGRATION**

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
16 any and all prior negotiations and understandings related hereto shall be deemed to have been
17 merged within it. No representations or terms of agreement other than those contained herein exist
18 or have been made by any Party with respect to the other Party or the subject matter hereof.

19 **7. GOVERNING LAW**

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed or
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
23 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
24 to the extent that, Covered Products are so affected.

25 **8. NOTICES**

26 8.1 Unless specified herein, all correspondence and notices required to be provided
27 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (1) first-
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1 class, registered or certified mail, return receipt requested; or (2) overnight courier on any party by
2 the other party at the following addresses:

3 For Defendant:

4 Mann & Bros., Inc.
5 c/o Jack Mann
6 48 West 37th Street, 7th Floor
New York, NY 10018

7 With copy to:

8 J. Robert Maxwell
9 ROGERS JOSEPH O'DONNELL
A Professional Law Corporation
10 311 California Street, 10th fl
San Francisco, CA 94104

11 And

12 For Ferreiro:

13 Evan Smith
14 Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
15 Beverly Hills, CA 90212

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

19 9.1 This Consent Judgment may be executed in counterparts and by facsimile or pdf,
20 each of which shall be deemed an original, and all of which, when taken together, shall constitute
21 one and the same document.

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

24 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
25 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
26 Defendant agrees it shall support approval of such Motion.

27 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
28 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the

1 Parties agree to meet and confer in good faith on how to proceed and if such agreement is not
2 reached within 30 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
4 appellate court, the Parties shall meet and confer in good faith as to whether to modify the terms of
5 this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case
6 shall proceed on its normal course on the trial court's calendar.
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8 **11. SEVERABILITY**

9 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
10 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
11 remaining provisions shall not be adversely affected.
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13 **12. JOINT PREPARATION**

14 The Parties have jointly participated in the preparation of this Consent Judgment and this
15 Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or
16 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
17 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
18 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
19 the drafting Party shall not be employed in the interpretation of this Consent Judgment and, in this
20 regard, the Parties hereby waive California Civil Code § 1654.

21 **13 MODIFICATION**

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

24 **14 ATTORNEY'S FEES**

25 No party shall bring a motion to enforce the terms of this Consent Judgment without first
26 providing notice to the other party and meeting and conferring in good faith about the alleged
27 violation for a period of at least 30 days. A Party who unsuccessfully brings or contests an action
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1 arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable
2 attorney's fees and costs.

3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant
4 to law.

5 **15 RETENTION OF JURISDICTION**

6 This Court shall retain jurisdiction of this matter to implement or modify the Consent
7 Judgment.

8 **16 AUTHORIZATION**

9 The undersigned warrant that they are authorized to execute this Consent Judgment on
10 behalf of their respective Parties and have read, understood, and agree to all of the terms and
11 conditions of this Consent Judgment, and certify that each is fully authorized by the Party he or she
12 represents to execute the Consent Judgment on behalf of the Party represented and legally bind that
13 Party. Except as explicitly provided herein each Party is to bear its own attorney's fees and costs.
14

15 **AGREED TO:**

AGREED TO:

16
17 Date: 1/22/20

Date: JAN 17, 2020

18 By: Anthony Ferreiro
19 ANTHONY FERREIRO

By: [Signature]
MANN & BROS., INC.

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

24 Judge of Superior Court