

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH
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 EDGE IMPORTS, INC., TUESDAY
15 MORNING, INC.,

16 Defendants.

Case No.: RG19031166

CONSENT JUDGMENT

Judge: Delbert Gee

Dept.: 514

Hearing Date: April 1, 2022

Hearing Time: 2:00 PM

Reservation #: 521719513643

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

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 Edge Imports, Inc. (“Edge” 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 that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Edge is alleged to be 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 its sales of certain shoe organizers without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about February 25, 2019, Ferreiro served Edge, Tuesday Morning, Inc., and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of Clear Plastic Edge Home Shoe Organizer exposes users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On August 14, 2019, Ferreiro filed a complaint (the “Complaint”) in the matter.

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

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
2. DEFINITIONS

2.1 **Covered Products.** The term “Covered Products” means any Clear Plastic Edge
Home Shoe Organizer that are manufactured, distributed and/or offered for sale in California by
Edge.

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

3. INJUNCTIVE RELIEF: WARNINGS

3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
signed by both Parties, and continuing thereafter, Covered Products that Edge directly
manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
“Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
Product.

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

1 3.3 **Clear and Reasonable Warning.** Within One Hundred and Eighty (180) days of
2 the date this Consent Judgment is signed by both Parties, and continuing thereafter, a clear and
3 reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered
4 Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in California
5 that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning
6 for Covered Products that enter the stream of commerce prior to the date this Consent Judgment is
7 signed by both Parties. The warning shall consist of either the **Warning** or **Alternative Warning**
8 described in §§ 3.3(a) or (b), respectively:

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 (DEHP), which is known to the State of California to cause
12 cancer and birth defects or other reproductive harm. For more information go to
13 www.P65Warnings.ca.gov.

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

16 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

17 3.4 The Warning shall be provided to California consumers in manner that complies
18 with 27 C.C.R. §25602(a). In addition, for any Covered Product sold over the internet, the
19 Warning shall appear prior to checkout on the primary product page, or as a pop-up when a
20 California zip code is input into the shipping instructions, or on the checkout page in full text or
21 through a clearly marked hyperlink using the word "**WARNING**" in all capital and bold letters
22 when a California delivery address is indicated for any purchase of any Covered Product. An
23 asterisk or other identifying method must be utilized to identify which products on the checkout
24 page are subject to the Warning. Given Edge’s lack of control over third-party websites, the
25 online warning requirements expressed in this Section apply only to Covered Products sold
26 through Edge’s website.

27 The Warning shall be at least the same size as the largest of any other health or safety
28 warnings also appearing on the website or on the label and the word "**WARNING**" shall be in all
capital letters and in bold print. No statements intended to or likely to have the effect of

1 diminishing the impact of the Warning on the average lay person shall accompany the Warning.
2 Further, no statements may accompany the Warning that state or imply that the source of the
3 listed chemical has an impact on or results in a less harmful effect of the listed chemical.

4 Edge must display or direct consumers to the above Warning with such conspicuousness,
5 as compared with other words, statements or designs on the label, or on its website, if applicable,
6 to render the Warning likely to be read and understood by an ordinary individual under customary
7 conditions of purchase or use of the product.

8 For purposes of this Consent Judgment, the term "label" means a display of written,
9 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
10 container or wrapper.

11 For purposes of this Consent Judgment, when Edge is required to provide a warning for a
12 Covered Product pursuant to Section 3.1, Edge may satisfy the warning requirement by providing
13 the required information in compliance with 27 C.C.R. § 25600.2 (2020) to any business that is
14 subject to Proposition 65 to which it is selling or transferring the Covered Product.

15 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
16 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
17 Judgment or by complying with warning requirements adopted by the State of California's Office
18 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

19 **4. MONETARY TERMS**

20 **4.1 Civil Penalty.** Edge shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
21 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
22 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining
23 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
24 § 25249.12(d).

25 **4.1.1** Within ten (10) days of the Effective Date, Edge shall issue two separate
26 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b)
27

28

1 “Brodsky & Smith in Trust for Ferreiro” in the amount of \$250.00. Payment owed to Ferreiro
2 pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

21 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
22 forth above as proof of payment to OEHHA.

23 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Edge shall pay
24 \$15,500.00 to Brodsky & Smith (“Brodsky & Smith”) as complete reimbursement for Ferreiro’s
25 attorneys’ fees and costs incurred as a result of investigating, bringing this matter to Edge attention,
26 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
27 pursuant to Code of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
acting on his own behalf, and on behalf of the public interest, and Edge, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their

1 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
2 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
3 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
4 retailers, franchisees, and cooperative members (“Downstream Releasees”), of all claims for
5 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the
6 Notice, with respect to any Covered Products manufactured, distributed, or sold by Edge prior to
7 the Effective Date. It is the Parties’ intention that this Consent Judgment shall have preclusive effect
8 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
9 or the public interest shall be permitted to pursue and/or take any action with respect to any violation
10 of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to
11 the Notice against Edge and/or the Downstream Releasees of the Covered Products (“Proposition
12 65 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with
13 Proposition 65 with regard to 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 Edge, Defendant Releasees, and Downstream Releasees from any and all
18 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
19 agreements, promises, liabilities, damages, 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 alleged violations of Proposition 65 related to or arising from Covered
22 Products manufactured, distributed, or sold by Edge, Defendant Releasees or Downstream
23 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
24 specifically waives any and all rights and benefits which she now has, or in the future may have,
25 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
26 follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 5.3 Edge waives any and all claims against Ferreiro, his attorneys and other
6 representatives, for any and all actions taken or statements made (or those that could have been
7 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
9 and/or with respect to Covered Products.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
12 any and all prior negotiations and understandings related hereto shall be deemed to have been
13 merged within it. No representations or terms of agreement other than those contained herein exist
14 or have been made by any Party with respect to the other Party or the subject matter hereof.

15 **7. GOVERNING LAW**

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

21 **8. NOTICES**

22 8.1 Unless specified herein, all correspondence and notices required to be provided
23 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
24 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
25 by the other party at the following addresses:

26 For Defendant:

27 George Dowell, Esq.
28 Lange, Kim, Dowell LLP
6849 Old Dominion Drive, Suite 225
McLean, Virginia 22101

And

1 For Ferreiro:

2 Evan Smith
3 Brodsky & Smith
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
10 which shall be deemed an original, and all of which, when taken together, shall constitute one and
11 the same document.

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

14 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
15 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
16 Defendant agrees it shall support approval of such Motion.

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
19 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
20 days, the case shall proceed on its normal course.

21 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
22 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
23 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
24 its normal course on the trial court's calendar.

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
28

1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.
4

5 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
6 pursuant to law.

7 **13. RETENTION OF JURISDICTION**

8 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
9 Consent Judgment.

10 **14. AUTHORIZATION**

11 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
12 respective Parties and have read, understood and agree to all of the terms and conditions of this
13 document and certify that he or she is fully authorized by the Party he or she represents to execute
14 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
15 explicitly provided herein each Party is to bear its own fees and costs.

16 **AGREED TO:**

AGREED TO:

17
18 Date: _____

Date: 1-25-2022

19 By: _____
20 ANTHONY FERREIRO

By: [Signature]
EDGE IMPORTS, INC.

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

23
24 Dated: _____

Judge of Superior Court

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

12. ATTORNEY'S FEES

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

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

13. RETENTION OF JURISDICTION

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

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: 2/14/2002

Date: _____

By: Anthony Ferreiro
ANTHONY FERREIRO

By: _____
EDGE IMPORTS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court