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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 MYLEC, INC., DICK'S SPORTING GOODS,
15 INC.,

16 Defendants.

Case No.: RG20077121

CONSENT JUDGMENT

Judge: James Reilly
Dept.: 25
Hearing Date: May 26, 2021
Hearing Time: 9:00 AM
Reservation #: R-2246921

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

9 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of the Mylec sharp shooter
11 goals/targets without providing a clear and reasonable exposure warning pursuant to Proposition
12 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause
13 cancer and reproductive toxicity.

14 **1.3 Notice of Violation/Complaint.** On or about January 17, 2020, Ferreiro served
15 Mylec, Dick’s Sporting Goods, Inc., and various public enforcement agencies with documents
16 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
17 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
18 customers that use of Mylec sharp shooter goals/targets expose users in California to DEHP. No
19 public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On
20 October 9, 2020, Ferreiro filed a 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.
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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 the Mylec sharp shooter
10 goals/targets that are manufactured, distributed and/or offered for sale in California by Mylec.

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

22 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
24 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
25 and 8270C or other methodology utilized by federal or state government agencies for the purpose
26 of determining the phthalate content in a solid substance.
27
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1 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
3 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
4 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
7 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

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

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

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

14 **4. MONETARY TERMS**

15 4.1 **Total Settlement Payment.** Mylec shall pay \$17,500.00 in settlement of all claims
16 referred to in this Agreement. Within thirty (30) days of the Effective Date, Mylec shall pay
17 \$10,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement of the Civil
18 Penalty payment pursuant To Health & Safety Code § 25249.7(b), and as partial reimbursement of
19 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
20 Mylec's attention, litigating and negotiating and obtaining judicial approval of a settlement in the
21 public interest, pursuant to Code of Civil Procedure § 1021.5. Within one hundred and twenty (120)
22 days of the Effective Date, Mylec shall pay \$7,500.00 to Brodsky Smith as full and final satisfaction
23 for all monies owed pursuant to this Agreement. Of the Total Settlement Payment, \$1,500.00 will
24 be paid as a Civil Penalty, and \$16,000.00 will be paid to Brodsky Smith as complete
25 reimbursement for Ferreiro's attorneys' fees and costs.

26 4.1.1 **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Within forty-
27 five (45) days of the Effective Date, Brodsky Smith shall pay \$1,500.00 as a Civil Penalty in
28

1 accordance with this Section. The Civil Penalty payment shall be allocated in accordance with
2 California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to
3 OEHHA (\$1,125.00) and the remaining 25% (\$375.00) of the Penalty remitted to Ferreiro.
4 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
5 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

6 For United States Postal Service Delivery:

7
8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

13 For Non-United States Postal Service Delivery:

14
15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street
19 Sacramento, CA 95814

20 **5. RELEASE OF ALL CLAIMS**

21 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
22 acting on his own behalf, and on behalf of the public interest, and Mylec, and its parents,
23 shareholders, members, directors, officers, managers, employees, representatives, agents,
24 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
25 predecessors, successors and assigns ("Defendant Releasees"), and each entity to whom Mylec
26 directly or indirectly distributes or sells the Products, including but not limited to, downstream
27 distributors, wholesalers, customers, retailers, including but not limited to Dick's Sporting Goods,
28 Inc., and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and
licensees ("Downstream Releasees"), of all claims for violations of Proposition 65 based on
exposure to DEHP from Covered Products as set forth in the Notice, with respect to any Covered
Products manufactured, distributed, or sold by Mylec prior to the Effective Date as relates to the
Covered Product. It is the Parties' intention that this Consent Judgment shall have preclusive effect
such that no other actions by private enforcers, whether purporting to act in his, her, or its interests

1 or the public interest shall be permitted to pursue and/or take any action with respect to any violation
2 of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to
3 the Notice against Mylec and/or the Downstream Releasees of the Covered Products (“Proposition
4 65 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with
5 Proposition 65 with regard to the Covered Products.

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

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

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

6. INTEGRATION

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

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:

Lindsee B. Falcone, Esq.
The Aguilera Law Group, APLC
650 Town Center Drive, Suite 100
Costa Mesa, CA 92626

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.

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, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 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
11 **AGREED TO:**

AGREED TO:

12
13 Date:

4/7/2021

Date:

3/11/21

14 By:

Anthony Ferreiro
ANTHONY FERREIRO

By:

Mylec Laperouse
MYLEC, INC.

15
16
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18
19 Dated: _____

Judge of Superior Court