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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 PBI GROUP, LLC, PBI GROUP, INC., SUPRE,  
15 INC.,

16 Defendants.

Case No.: RG21088866

**CONSENT JUDGMENT**

Judge: Jeffrey Brand

Dept.: 15

Hearing Date: May 4, 2023

Hearing Time: 1:30 PM

Reservation #: 052222045886

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**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 PBI Group, LLC (“PBI Group” 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. PBI Group 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 are Hempz his kit – cases/bags 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, 2020, Ferreiro served PBI Group, 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 Studio Art pencil pouches expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On January 26, 2021, 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           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.  
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9           **2.       DEFINITIONS**

10           2.1       **Covered Products.** The term “Covered Products” means are Hempz his kit –  
11 cases/bags that are manufactured, distributed and/or offered for sale in California by PBI Group.

12           2.2       **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
13 entered as a Judgment of the Court.

14           **3.       INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

15           3.1       **Reformulation of Covered Products.** As of the date this Consent Judgment is  
16 signed by both Parties, and continuing thereafter, Covered Products that PBI Group directly  
17 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
18 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
20 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §  
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
22 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  
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose  
27 of determining the phthalate content in a solid substance.  
28

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:  
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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](http://www.P65Warnings.ca.gov).

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

16           ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

1           In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s  
2 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where  
3 PBI Group offers Covered Products for sale to consumers in California. The requirements of this  
4 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink  
5 using the word “**WARNING**,” appears on the product display page, or by otherwise prominently  
6 displaying the warning to the purchaser prior to completing the purchase. To comply with this  
7 Section, PBI Group shall (a) post the **Warning** or **Alternative Warning** on its own website and,  
8 if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not  
9 have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party  
10 internet sellers, provide such sellers with written notice in accordance with Title 27, California  
11 Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been  
12 provided with written notice in accordance with Title 27, California Code of Regulations, Section  
13 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning  
14 requirements of this Section.

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”) applicable to the Covered Product and  
19 the exposures at issue after the Effective Date.

20           **4. MONETARY TERMS**

21           **4.1 Civil Penalty.** PBI Group shall pay \$2,500.00 as a Civil Penalty pursuant to Health  
22 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
23 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
24 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

25           **4.1.1** Within ten (10) days of the Effective Date, PBI Group shall issue two  
26 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,875.00; and  
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1 to (b) "Anthony Ferreiro" in the amount of \$625.00. Payment owed to Ferreiro pursuant to this  
2 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, PBI Group shall pay  
24 \$22,500.00 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 PBI Group  
26 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
27 interest, 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 PBI Group, 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 PBI Group prior  
7 to the Effective Date. It is the Parties’ intention that this Consent Judgment shall have preclusive  
8 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its  
9 interests or the public interest shall be permitted to pursue and/or take any action with respect to  
10 any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought  
11 pursuant to the Notice against PBI Group and/or the Downstream Releasees of the Covered  
12 Products based on exposure to DEHP (“Proposition 65 Claims”). Compliance with the terms of this  
13 Consent Judgment constitutes compliance with Proposition 65 to exposure to DEHP from use of  
14 the Covered Product.

15           5.2     In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
16 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
17 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
18 legal action and releases PBI Group, Defendant Releasees, and Downstream Releasees from any  
19 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
20 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
21 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
22 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
23 from Covered Products manufactured, distributed, or sold by PBI Group, Defendant Releasees or  
24 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
25 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the  
26 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
27 provides as follows:  
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
5 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
6 DEBTOR OR RELEASED PARTY.

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

12 **6. INTEGRATION**

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

17 **7. GOVERNING LAW**

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

23 **8. NOTICES**

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

28 For Defendant:

Lawrence R. Cagney  
Krieger & Krieger, A Law Corporation  
249 E. Ocean Boulevard, Suite 750  
Long Beach, California 90802



1 And

2 For Ferreiro:

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

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

26 **11. MODIFICATION**

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

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**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: <u>3/15/23</u>                            | Date: <u>12/19/2022</u>                  |
| By: <u>Anthony Ferreiro</u><br>ANTHONY FERREIRO | By: <u>[Signature]</u><br>PBI GROUP, LLC |

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

Dated: \_\_\_\_\_ Judge of Superior Court