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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 SIERRA TRADING POST, INC.,

15 Defendant.
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Case No.: RG21099290

CONSENT JUDGMENT

Judge: Jeffrey Brand

Dept.: 15

Hearing Date: May 9, 2023

Hearing Time: 1:30 PM

Reservation #: 872598932787

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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 Sierra Trading Post, Inc. (“Sierra” 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. Sierra 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 TrekGear duffel 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 May 18, 2020, Ferreiro served Sierra, Noell Industries, Inc. a/k/a BlackHawk Industries, Inc., Alliant Techsystems Operations, LLC, Sierra Trading Post, 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 TrekGear duffel bags expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May 14, 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.

8
9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means TrekGear duffel bags,
11 Style Nos. TG-805-BK, TG-805-BL that are manufactured, distributed and/or offered for sale in
12 California by Sierra.

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

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

16 3.1 **Reformulation of Covered Products.** As of the Effective Date and continuing
17 thereafter, Sierra shall not order any Covered Products for sale into California unless the Covered
18 Products are: (a) Reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and
19 reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent
20 Judgment, a "Reformulated Product" is a Covered Product that is in compliance with the standard
21 set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any
22 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
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 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 purchases for sale in California that is not a
4 Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered
5 Products that enter the stream of commerce prior to the date this Consent Judgment is signed by
6 both Parties. The warning shall consist of either the **Warning** or **Alternative Warning** described
7 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:** Sierra 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 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 Sierra offers Covered Products for sale to consumers in California. The requirements of this Section
4 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the
5 word "**WARNING**," appears on the product display page, or by otherwise prominently displaying
6 the warning to the purchaser prior to completing the purchase. To comply with this Section, Sierra
7 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
8 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
9 the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide
10 such sellers with written notice in accordance with Title 27, California Code of Regulations, Section
11 25600.2. Third-party internet sellers of the Product that have been provided with written notice in
12 accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in
13 Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

14 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
15 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
16 Judgment or by complying with warning requirements adopted by the State of California's Office
17 of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Product and
18 the exposures at issue after the Effective Date.

19 4. **MONETARY TERMS**

20 4.1 **Civil Penalty.** Sierra 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 fourteen (14) business days of the Effective Date, or upon receipt of
26 the W-9 Forms from the appropriate payees, whichever is later, Sierra shall issue two separate
27 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b)
28

1 “Anthony Ferreiro” in the amount of \$250.00. Payment owed to Ferreiro pursuant to this Section
2 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 OEHHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
8 to OEHHHA (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 OEHHHA shall be mailed to Brodsky & Smith at the address set
22 forth above as proof of payment to OEHHHA.

23 4.2 **Attorneys’ Fees.** Within fourteen (14) business days of the Effective Date, or upon
24 receipt of the W-9 Forms from the appropriate payees, whichever is later, Sierra shall pay
25 \$15,250.00 to Brodsky & Smith (“Brodsky & Smith”) as complete reimbursement for Ferreiro’s
26 attorneys’ fees and costs incurred as a result of investigating, bringing this matter to Sierra attention,
27 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
28 pursuant to Code of Civil Procedure § 1021.5.

29 **5. RELEASE OF ALL CLAIMS**

30 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
31 acting on his own behalf, and on behalf of the public interest, and Sierra, and its parents,
32 shareholders, members, directors, officers, managers, employees, representatives, agents,
33

1 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
2 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
3 directly or indirectly distribute or sell Covered Products, including but not limited to distributors,
4 wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members
5 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to
6 DEHP from use of the Covered Products as set forth in the Notice, with respect to any Covered
7 Products manufactured, distributed, or sold by Sierra prior to the Effective Date. It is the Parties’
8 intention that this Consent Judgment shall have preclusive effect such that no other actions by
9 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
10 permitted to pursue and/or take any action with respect to any violation of Proposition 65 based on
11 exposure to DEHP that was alleged in the Complaint, or that could have been brought pursuant to
12 the Notice against Sierra and/or the Downstream Releasees of the Covered Products (“Proposition
13 65 Claims”).

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 Sierra, 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 DEHP
22 exposure from Covered Products manufactured, distributed, or sold by Sierra, Defendant Releasees
23 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
24 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
25 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
26 provides as 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 Sierra 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 DEHP exposure from Covered Products.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
12 prior negotiations and understandings related hereto shall be deemed to have been merged within
13 it. No representations or terms of agreement other than those contained herein exist or have been
14 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. If Proposition 65 is repealed or is otherwise
18 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
19 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
20 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 General Counsel
28 The TJX Companies, Inc.
770 Cochituate Road
Framingham, MA 01701

1 Jeffrey Margulies
2 Jeff.margulies@nortonrosefulbright.com
3 Norton Rose Fulbright US LLP
4 555 South Flower Street, Forty-First Floor
5 Los Angeles, California 90071

6 And

7 For Ferreiro:

8 Evan Smith
9 Brodsky & Smith
10 9595 Wilshire Blvd., Ste. 900
11 Beverly Hills, CA 90212

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

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

20 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
21 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
22 Defendant agrees it shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
25 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
26 days, the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
28 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
its normal course on the trial court's calendar.

1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **12. ATTORNEY'S FEES**

5 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

7 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
8 pursuant to law.

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

12 **14. AUTHORIZATION**

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

18
19 **AGREED TO:**

AGREED TO:

20
21 Date: _____

Date: October 18, 2022

22 By: _____

23 ANTHONY FERREIRO

By: J. A. Peoples

SIERRA TRADING POST, INC.

Jennifer A. Peoples

VP, Legal

The TJX Companies, Inc. (ultimate parent
company to Sierra Trading Post, Inc.)

24
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26
27 Dated: _____

Judge of Superior Court

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16 document and certify that he or she is fully authorized by the Party he or she represents to execute
17 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
18 explicitly provided herein each Party is to bear its own fees and costs.

19 **AGREED TO:**

AGREED TO:

20 Date: 5/16/23

Date: _____

21 By: Anthony Ferreira

22 ANTHONY FERREIRO

By: _____

23 SIERRA TRADING POST, INC.

24
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26
27 Dated: _____

Judge of Superior Court