

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 SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 SOLUTIONS MURALES PROSLAT, INC.,
15 BED BATH & BEYODN, INC.,

16 Defendants.

Case No.: CGC-21-593179

CONSENT JUDGMENT

Judge: Richard B. Ulmer Jr.
Dept.: 302
Hearing Date: August 3, 2022
Hearing Time: 9:30 AM
Reservation #:

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 Solutions Murales
4 Proslat, Inc. (“Solutions Murales” 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 that seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products. Solutions
8 Murales is alleged to be a person in the course of doing business for purposes of Proposition 65,
9 Cal. Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Proslat steel hooks with
12 polyvinyl chloride (PVC) coating, without providing a clear and reasonable exposure warning
13 pursuant to Proposition 65. Ferreiro alleges that DEHP is listed under Proposition 65 as a chemical
14 known to the State of California to cause cancer and reproductive toxicity.

15 **1.3 Notice of Violation/Complaint.** On or about July 8, 2020, Ferreiro served Solutions
16 Murales, and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of Proslat double
19 hooks expose users in California to DEHP. No public enforcer has brought and is diligently
20 prosecuting the claims alleged in the Notice. On June 28, 2021, Ferreiro filed a complaint (the
21 “Complaint”) in the matter.

22 **1.4**For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Complaint based on the facts alleged
27 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 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Proslat steel hooks with
10 polyvinyl chloride (PVC) coating that are manufactured, distributed and/or offered for sale in
11 California by Solutions Murales.

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: WARNINGS**

15 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
16 thereafter, Covered Products that Solutions Murales directly manufactures, imports, distributes,
17 sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2,
18 below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4,
19 below. For purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that
20 is in compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§
21 3.3 and 3.4 shall not apply to any Reformulated 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.

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 manufactures, imports, distributes, sells, or offers
4 for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant
5 to provide a warning for Covered Products that enter the stream of commerce prior to the Effective
6 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
7 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 DEHP, which
10 is known to the State of California to cause cancer and birth defects or other
11 reproductive harm. For more information go to www.P65Warnings.ca.gov.

12 (b) **Alternative Warning:** Solutions Murales may, but is not required to, use the
13 alternative short-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 on the Covered Product, or
21 affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign
22 or electronic device or automatic process, provided that the warning is displayed with such
23 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
24 read and understood by an ordinary individual under customary conditions of purchase or use. A
25 warning may be contained in the same section of the packaging, labeling, or instruction booklet
26 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at
27 least the same size as those other safety warnings.
28

1 The same warning shall be posted on any websites under the exclusive control of Solutions
2 Murales where Covered Products are sold by Solutions Murales directly to consumers located in
3 California. The warning requirements of this section shall be satisfied if the foregoing warning
4 appears either: (a) on the same web page on which a Covered Product is displayed and/or described
5 or providing a clearly marked hyperlink using the word “**WARNING**”;; (b) on the same page as
6 the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser prior
7 to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation
8 point in a yellow or white equilateral triangle may appear adjacent to or immediately following the
9 display, description, price, or checkout listing of the Covered Product, if the warning statement
10 appears elsewhere on the same web page in a manner that clearly associates it with the product(s)
11 to which the warning applies.

12 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
14 Judgment or by complying with warning requirements adopted by the State of California’s Office
15 of Environmental Health Hazard Assessment (“**OEHHA**”). Solutions Murales may comply with
16 the warning requirements of sections 3.3 and 3.4 by any other means authorized pursuant to Health
17 and Safety Code 25249.5 *et. seq.* and/or 27 CCR § 25600 *et seq.*, as may be amended from time to
18 time.

19 **4. MONETARY TERMS**

20 **4.1 Civil Penalty.** Solutions Murales shall pay \$2,000 as a Civil Penalty pursuant to
21 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
22 & Safety Code Sections § 25249.12(c)(1) and 25249.12(d), with 75% of these funds remitted to
23 OEHHA and the remaining 25% of the Civil Penalty remitted to Ferreiro.

24 **4.1.1** Within ten (10) days of the Effective Date, Solutions Murales shall issue
25 two separate checks for the Civil Penalty payment to (a) “**OEHHA**” in the amount of \$1,500.00;
26 and to (b) “**Brodsky Smith in Trust for Ferreiro**” in the amount of \$500.00. Payment owed to
27 Ferreiro pursuant to this Section shall be delivered to the following payment address:

28 Evan J. Smith, Esquire

1 Brodsky Smith
2 Two Bala Plaza, Suite 805
3 Bala Cynwyd, PA 19004

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

12 For Non-United States Postal Service Delivery:

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

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

20 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Solutions Murales shall
21 pay \$25,500.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Ferreiro's
22 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Solutions
23 Murales attention, litigating and negotiating and obtaining judicial approval of a settlement in the
24 public interest, pursuant to Code of Civil Procedure § 1021.5.

25 **5. RELEASE OF ALL CLAIMS**

26 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
27 acting on his own behalf, and on behalf of the public interest, and Solutions Murales, and each of
28 their parents, shareholders, members, directors, officers, managers, employees, representatives,
agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
and their predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom
they obtain and to whom they directly or indirectly distribute or sell Covered Products, including
but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,
licensees, retailers, franchisees, and cooperative members, including specifically but not limited to,

1 Bed Bath & Beyond, Inc., (“Downstream Releasees”), of all claims for violations of Proposition
2 65 based on exposure to DEHP from use of the Covered Products manufactured, distributed, or
3 sold by Solutions Murales or Bed Bath & Beyond, Inc. prior to the Effective Date as set forth in
4 the Notice. It is the Parties’ intention that this Consent Judgment shall have preclusive effect such
5 that no other actions by private enforcers, whether purporting to act in his, her, or its interests or
6 the public interest shall be permitted to pursue and/or take any action with respect to any violation
7 of Proposition 65 based on exposure to DEHP from use of the Covered Products that was alleged
8 in the Complaint, or that could have been brought pursuant to the Notice against Solutions Murales,
9 Bed Bath & Beyond, Inc., and/or the Downstream Releasees (“Proposition 65 Claims”).
10 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
11 with regard to exposure to DEHP from use of the Covered Products.

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

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

1 5.3 Solutions Murales waives any and all claims against Ferreiro, his attorneys and other
2 representatives, for any and all actions taken or statements made (or those that could have been
3 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
5 and/or with respect to Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
8 any and all prior negotiations and understandings related hereto shall be deemed to have been
9 merged within it. No representations or terms of agreement other than those contained herein exist
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendant:

23 Adam H. Braun
24 Braun & Braun LLP
25 10880 Wilshire Boulevard, Suite 1020
26 Los Angeles, CA 90024

27 And
28

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

