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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 THE HOME DEPOT, INC.,
15 Defendant.

Case No.: HG21099964

CONSENT JUDGMENT

Judge: Tara Desautels
Dept.: 16

Hearing Date: April 5, 2023

Hearing Time: 2:30 PM

Reservation #: 339522922739

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

10 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate (DINP) from its sales of
12 are wicker fishing creels/baskets without providing a clear and reasonable exposure warning
13 pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the
14 State of California to cause cancer and reproductive toxicity. DINP is listed pursuant to Proposition
15 65 as a chemical known to the State of California to cause cancer.

16 1.3 **Notice of Violation/Action.** On or about September 23, 2020, Ferreiro served
17 Quickway and various public enforcement agencies with documents entitled “60-Day Notice of
18 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
19 violated Proposition 65 for failing to warn consumers and customers that use of wicker fishing
20 creels/baskets expose users in California to DEHP and DINP. No public enforcer has brought and
21 is diligently prosecuting the claims alleged in the Notice. On May 5, 2021, Ferreiro filed a
22 complaint (the “Complaint”) against The Home Depot, Inc. in the matter. On January 19, 2022,
23 Ferreiro filed an amended complaint (the “Amended Complaint”) to add Quickway Imports, Inc.
24 as a Defendant to the case. The Complaint and Amended Complaint are collectively referred to
25 herein as, the “Action.”

26 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
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1 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
2 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
3 claims which were or could have been raised in the Action based on the facts alleged therein and
4 in the Notice.

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

12 **2. DEFINITIONS**

13 2.1 **Covered Products.** The term “Covered Products” means are wicker fishing
14 creels/baskets that are manufactured, distributed, shipped into California and offered for sale in
15 California by Quickway.

16 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
17 entered as a Judgment of the Court.

18 **3. INJUNCTIVE RELIEF: WARNINGS**

19 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
20 signed by both Parties, and continuing thereafter, Covered Products that Quickway directly
21 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
22 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
23 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
24 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
25 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
26 Product.

1 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
2 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP and
3 DINP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
4 3580A and 8270C or other methodology utilized by federal or state government agencies for the
5 purpose of determining the phthalate content in a solid substance.

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

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

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

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

19 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.¹

20 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
21 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
22 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
23 triangle with a black outline, except that if the sign or label for the Covered Product does not use

24 ¹ To the extent Quickway determines that the Products for which a warning statement is
25 required under § 3.3 above contain DINP in concentrations in excess of 1,000 ppm, and **does not**
26 **contain DEHP in concentrations in excess of 1,000 ppm**, if it chooses not to use an **Alternative**
27 **Warning**, it shall substitute the name DINP in place of DEHP in the **Warning** shown in § 3.3(a),
28 herein. In this event, Quickway shall delete the language “and birth defects or other reproductive
harm” from the warning statement shown in § 2.3(a), and, if Quickway **does** elect to use the
Alternative Warning, it shall delete the language “and Reproductive Harm” from § 3.3(b),
herein.

1 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
2 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
3 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
4 automatic process, providing that the warning is displayed with such conspicuousness, as compared
5 with other words, statements, or designs as to render it likely to be read and understood by an
6 ordinary individual under customary conditions of purchase or use. A warning may be contained
7 in the same section of the packaging, labeling, or instruction booklet that states other safety
8 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
9 those other safety warnings.

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

23 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
24 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
25 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
26 Covered Product and exposures at issue after the Effective Date
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1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Quickway shall pay \$1,000.00 as a Civil Penalty pursuant to Health
3 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
5 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

6 4.1.1 Within ten (10) days of the Effective Date, Quickway shall issue two
7 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to
8 (b) “Brodsky & Smith in Trust for Ferreiro” in the amount of \$250.00. Payment owed to Ferreiro
9 pursuant to this Section shall be delivered to the following payment address:

10 Evan J. Smith, Esquire
11 Brodsky & Smith
12 Two Bala Plaza, Suite 805
13 Bala Cynwyd, PA 19004

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

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

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

 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Quickway shall pay
\$14,000.00 to Brodsky & Smith (“Brodsky Smith”) as complete reimbursement for Ferreiro’s
attorneys’ fees and costs incurred as a result of investigating, bringing this matter to Quickway

1 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
2 interest, pursuant to Code of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
5 acting on his own behalf, and on behalf of the public interest, and Quickway, and its parents,
6 shareholders, members, directors, officers, managers, employees, representatives, agents,
7 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
8 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
9 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
10 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
11 retailers, including but not limited to, The Home Depot, Inc., and its parents, subsidiaries, and
12 affiliates, franchisees, and cooperative members (“Downstream Releasees”), of all claims for
13 violations of Proposition 65 based on exposure to DEHP and DINP from use of the Covered
14 Products manufactured, distributed, or sold by Quickway prior to the Effective Date as set forth in
15 the Notice. It is the Parties’ intention that this Consent Judgment shall have preclusive effect such
16 that no other actions by private enforcers, whether purporting to act in his, her, or its interests or
17 the public interest shall be permitted to pursue and take any action with respect to any violation of
18 Proposition 65 based on exposure to DEHP and DINP from use of the Covered Products that was
19 alleged in the Action, or that could have been brought pursuant to the Notice against Quickway and
20 the Downstream Releasees (“Proposition 65 Claims”). Compliance with the terms of this Consent
21 Judgment constitutes compliance with Proposition 65 with regard to exposure to DEHP and DINP
22 from use of the Covered Products.

23 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
24 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
25 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
26 legal action and releases Quickway, Defendant Releasees, and Downstream Releasees from any
27 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
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1 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
2 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
3 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
4 from Covered Products manufactured, distributed, or sold by Quickway, Defendant Releasees or
5 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
6 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
7 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
8 provides as follows:

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

13 5.3 Quickway waives any and all claims against Ferreiro, his attorneys and other
14 representatives, for any and all actions taken or statements made (or those that could have been
15 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
16 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
17 and with respect to Covered Products.

18 **6. INTEGRATION**

19 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
20 any and all prior negotiations and understandings related hereto shall be deemed to have been
21 merged within it. No representations or terms of agreement other than those contained herein exist
22 or have been made by any Party with respect to the other Party or the subject matter hereof.

23 **7. GOVERNING LAW**

24 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
27 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
28 to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Avrom R. Vann, Esquire
8 Avrom R. Vann, P.C.
9 Attorney at Law
10 2 University Plaza Drive - Suite 600
11 Hackensack, NJ 07601

12 And

13 For Ferreiro:

14 Evan Smith
15 Brodsky & Smith
16 9595 Wilshire Blvd., Ste. 900
17 Beverly Hills, CA 90212

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
22 which shall be deemed an original, and all of which, when taken together, shall constitute one and
23 the same document.

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

26 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
27 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
28 Defendant agrees it shall support approval of such Motion.

 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the

1 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
2 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

18 **14. AUTHORIZATION**

19 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood and agree to all of the terms and conditions of this
21 document and certify that he or she is fully authorized by the Party he or she represents to execute
22 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
23 explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO:

AGREED TO:

Date: 2/14/23

Date: 12/29/2022

By: Anthony Ferreiro
ANTHONY FERREIRO

By: Shawn Halbergson
QUICKWAY IMPORTS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court