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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 EBSCO INDUSTRIES, INC., PLASTIC
15 RESEARCH DEVELOPMENT
16 CORPORATION DBA PRADCO OUTDOOR
BRANDS,

17 Defendants.

Case No.: RG21085768

CONSENT JUDGMENT

Judge: James Reilly

Dept.: 25

Hearing Date: April 28, 2021

Hearing Time: 9:00 AM

Reservation #: R-2239597

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”) Plastic Research
4 Development Corporation dba PRADCO Outdoor Brands (“PRADCO”) with Ferreiro and
5 Defendant collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an
6 individual residing in California that seeks to promote awareness of exposures to toxic chemicals
7 and improve human health by reducing or eliminating hazardous substances contained in consumer
8 products. PRADCO is alleged to be a person in the course of doing business for purposes of
9 Proposition 65, 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 Summit storage bags/packs and
12 Lindy leech and bait tamers without providing a clear and reasonable exposure warning pursuant
13 to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of
14 California to cause cancer and reproductive toxicity.

15 1.3 **Notices of Violation/Complaint.** On or about October 7, 2020, Ferreiro served
16 PRADCO, Ebsco Industries, Inc., Bass Pro, LLC, BPS Direct, LLC, and various public
17 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
18 Safety Code §25249.7(d) (the “Summit Notice”), alleging that the noticed entities violated
19 Proposition 65 for failing to warn consumers and customers that use of Summit storage bags/packs
20 expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting
21 the claims alleged in the Summit Notice. On or about October 12, 2020, Ferreiro served PRADCO,
22 Ebsco Industries, Inc., Bass Pro, LLC, BPS Direct, LLC, and various public enforcement agencies
23 with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
24 §25249.7(d) (the “Lindy Notice”), alleging that the noticed entities violated Proposition 65 for
25 failing to warn consumers and customers that use of Lindy leech tamers expose users in California
26 to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
27 Lindy Notice. On January 12, 2021, Ferreiro filed a complaint (the “Complaint”) in the matter.
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1 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
2 jurisdiction over PRADCO as to the allegations contained in the Complaint filed in this matter, that
3 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
4 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
5 claims which were or could have been raised in the Complaint based on the facts alleged therein
6 and/or in the Notice.

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

14 **2. DEFINITIONS**

15 2.1 **Covered Products.** The term “Covered Products” means Lindy leech tamers and
16 Summit storage bags/packs that are manufactured, distributed and/or offered for sale in California
17 by PRADCO.

18 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
19 entered as a Judgment of the Court.

20 **3. INJUNCTIVE RELIEF: WARNINGS**

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

6 3.3 **Clear and Reasonable Warning.** As of the Effective Date, a clear and reasonable
7 exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that
8 PRADCO manufacturers, imports, distributes, sells, or offers for sale in California that is not a
9 Reformulated Product. There shall be no obligation for PRADCO to provide a warning for Covered
10 Products it distributed or sold prior to the Effective Date. The warning shall consist of either the
11 **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

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

1 in the same section of the packaging, labeling, or instruction booklet that states other safety
2 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
3 those other safety warnings.

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

13 **3.5 Compliance with Warning Regulations.** The Parties agree that PRADCO shall be
14 deemed to be in compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this
15 Consent Judgment or by complying with warning requirements adopted by the State of California's
16 Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

17 **4. MONETARY TERMS**

18 **4.1 Civil Penalty.** PRADCO shall pay \$3,000.00 as a Civil Penalty pursuant to Health
19 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
20 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
21 Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

22 **4.1.1** Within ten (10) days of the Effective Date, PRADCO shall issue two
23 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and
24 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$750.00. Payment owed to
25 Ferreiro pursuant to this Section shall be delivered to the following payment address:

26 Evan J. Smith, Esquire
27 Brodsky & Smith, LLC
28 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

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

17 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, PRADCO shall pay
18 \$27,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's
19 attorneys' fees and costs incurred as a result of investigating, bringing this matter to PRADCO
20 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
21 interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
24 acting on his own behalf, and on behalf of the public interest, and PRADCO, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
28 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, cooperative members, including but not limited to Bass Pro, LLC, Bass Pro
Outdoor World, L.L.C., Cabela's Wholesale, L.L.C., and Cabela's LLC, and their respective

1 subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (“Downstream
2 Releasees”), of all claims for violations of Proposition 65 based on exposure to DEHP from
3 Covered Products as set forth in the Notice, with respect to any Covered Products manufactured,
4 distributed, or sold by PRADCO prior to the Effective Date. It is the Parties’ intention that this
5 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
6 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
7 pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the
8 Complaint, or that could have been brought pursuant to the Notice against PRADCO, Defendant
9 Releasees, and/or Downstream Releasees of the Covered Products (“Proposition 65 Claims”).
10 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
11 with regard to 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 PRADCO, Defendant Releasees, and Downstream Releasees from any
16 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
17 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
18 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
19 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
20 from Covered Products manufactured, distributed, or sold by PRADCO, Defendant Releasees or
21 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
22 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the
23 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
24 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 PRADCO 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. If Proposition 65 is repealed or is otherwise
14 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
15 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
16 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 Tyler Novak
24 Vice President, Legal Services
25 EBSCO Industries, Inc.
26 5724 Highway 280 E
27 Birmingham, AL 35242-6818

28 Jeffrey Margulies
 Norton Rose Fulbright US LLP
 555 South Flower Street, Forty-First Floor
 Los Angeles, CA 90071

1 And

2 For Ferreiro:

3 Evan Smith
4 Brodsky & Smith, LLC
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**
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.
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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: 3/4/2021

Date: 1-15-2021

By: Anthony Ferreiro
ANTHONY FERREIRO

By: [Signature]
EBSCO INDUSTRIES, INC.

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AGREED TO:

Date: 1-15-2021

By: 

PLASTIC RESEARCH DEVELOPMENT
CORPORATION DBA PRADCO OUTDOOR
BRANDS

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court