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8 ANTHONY FERREIRO

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 MEDSOURCE INTERNATIONAL,
15 LLC, ZORO TOOLS, INC.,

16 Defendants.

Case No.: 21-CV-002134

[PROPOSED] CONSENT JUDGMENT

Judge: Tara Desautels

Dept.: 24

Hearing Date: August 22, 2022

Hearing Time: 10:00 AM

Reservation #: 172508080033

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 MedSource
4 International, LLC. (“MedSource” 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.
8 MedSource 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 MedSource Suction Catheters
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is
13 listed under Proposition 65 as a chemical known to the State of California to cause cancer and
14 reproductive toxicity.

15 1.3 **Notice of Violation/Complaint.** On November 5, 2020, Ferreiro served MedSource
16 International, LLC, MedSource USA, Inc., Zoro Tools, Inc. and various public enforcement
17 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
18 § 25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn
19 consumers and customers that use of the MedSource Suction Catheters expose users in California
20 to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
21 Notices. On November 2, 2021, Ferreiro filed a complaint (the “Complaint”) in the above-
22 referenced matter.

23 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
25 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
26 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
27 claims which were or could have been raised in the Complaint based on the facts alleged therein
28 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 MedSource Suction
10 Catheters manufactured by MedSource and/or sold by MedSource on Zoro.com.

11 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
15 signed by both Parties, and continuing thereafter, Covered Products that MedSource directly
16 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
17 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
18 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
19 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
20 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
21 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.

27 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
28 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in

1 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
2 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
3 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
4 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
5 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

13 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
14 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
15 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
16 triangle with a black outline, except that if the sign or label for the Covered Product does not use
17 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
18 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
19 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
20 automatic process, providing that the warning is displayed with such conspicuousness, as compared
21 with other words, statements, or designs as to render it likely to be read and understood by an
22 ordinary individual under customary conditions of purchase or use. A warning may be contained
23 in the same section of the packaging, labeling, or instruction booklet that states other safety
24 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
25 those other safety warnings.

26 If MedSource sells Covered Products via an internet website to customers located in
27 California, the warning requirements of this section shall be satisfied if the foregoing warning
28 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;

(b) on the same page as the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Covered Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

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

4. MONETARY TERMS

4.1 Civil Penalty. MedSource shall pay \$1,000 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

4.1.1 Within fifteen (15) business days of the Effective Date, MedSource shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750; and to (b) "Brodsky & Smith, LLC" in the amount of \$250. Ferreiro agrees to provide IRS W-9 forms for each of the following payees under this Consent Judgment within five (5) days after this Consent Judgment is fully executed by the Parties. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky & Smith, LLC
Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

For United States Postal Service Delivery:
Mike Gyurics

1 Fiscal Operations Branch Chief
2 Office of Environmental Health Hazard Assessment
3 P.O. Box 4010
4 Sacramento, CA 95812-4010

5 For Non-United States Postal Service Delivery:
6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 1001 I Street
10 Sacramento, CA 95814

11 A copy of the check to OEHHHA shall be mailed to Brodsky & Smith, LLC at the address set forth
12 above as proof of payment to OEHHHA.

13 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, MedSource
14 shall pay \$15,500 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement for
15 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
16 MedSource's attention, litigating and negotiating and obtaining judicial approval of a settlement in
17 the public interest, pursuant to Code of Civil Procedure § 1021.5.

18 **5. RELEASE OF ALL CLAIMS**

19 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
20 acting on her own behalf, and on behalf of the public interest, and MedSource, and its parents,
21 shareholders, members, directors, officers, managers, employees, representatives, agents,
22 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
23 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
24 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
25 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
26 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
27 violations of Proposition 65 based on exposure to DEHP from use of the Covered Products as set
28 forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by
MedSource prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall
have preclusive effect such that no other actions by private enforcers, whether purporting to act in
his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
with respect to any violation of Proposition 65 based on exposure to DEHP from the Covered

1 Products that was alleged in the Complaint, or that could have been brought pursuant to the Notice
2 against MedSource and/or the Downstream Releasees of the Covered Products ("Proposition 65
3 Claims").

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

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

23 5.3 MedSource waives any and all claims against Ferreiro, his attorneys and other
24 representatives, for any and all actions taken or statements made (or those that could have been
25 taken or made) by Ferreiro and his attorneys and other representatives with regard to this matter,
26 whether in the course of investigating claims related to this case or otherwise seeking enforcement
27 of Proposition 65 against it in this matter, and/or with respect to exposure to DEHP from the
28 Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
10 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
11 to the extent that, Covered Products are so affected.

12 **8. NOTICES**

13 8.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class mail, (registered or certified), return receipt requested and email; or (ii) overnight courier and
16 email to any party by the other party at the following addresses:

17 For Defendant:

18 Belinda Y. Hyland
19 Everett Dorey LLP
 18300 Von Karman Avenue
20 Irvine CA 92612
 bhyland@everettdorey.com

21 For Ferreiro:

22 Evan Smith
23 Brodsky & Smith, LLC
 9595 Wilshire Blvd., Ste. 900
24 Beverly Hills, CA 90212
 esmith@brodskysmith.com

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
12 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
13 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

26 **13. RETENTION OF JURISDICTION**

27 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
28 Consent Judgment.

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

9 Date: _____

Date: June 29, 2022

10 By: _____
11 ANTHONY FERREIRO

By:  _____
Samantha E. Dorey
Authorized Signatory for
MEDSOURCE INTERNATIONAL, LLC

12
13
14 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

15
16 Dated: _____

Judge of Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

AGREED TO:

8
9 Date: 6/30/22

Date: _____

10 By: Anthony Ferreiro
11 ANTHONY FERREIRO

12 By: _____
13 Belinda Y. Hyland
14 Authorized Signatory for
15 MEDSOURCE INTERNATIONAL, LLC

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

17 Dated: _____

Judge of Superior Court