

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*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

ANTHONY FERREIRO,

Plaintiff,

v.

JORDAN OUTDOOR ENTERPRISES, LTD.,  
THE HOME DEPOT, INC.,

Defendants.

Case No.: CGC-21-593154

**CONSENT JUDGMENT**

Judge: Ethan P. Schulman

Dept.: 302

Hearing Date: March 16, 2022

Hearing Time: 9:30 AM

Reservation #:

**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 Jordan Outdoor Enterprises, Ltd. (“Jordan Outdoor” 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. Jordan Outdoor 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 diisononyl phthalate (DINP) from its sales of RealTree EZ hangers without providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

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1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed individuals to diisononyl phthalate (DINP) from its sales of RealTree EZ hangers without providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1           1.3     **Notice of Violation/Complaint.** On or about September 29, 2020, Ferreiro served  
2 Jordan Outdoor, and various public enforcement agencies with documents entitled “60-Day Notice  
3 of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that  
4 Defendant violated Proposition 65 for failing to warn consumers and customers that use of RealTree  
5 EZ hangers expose users in California to DINP. No public enforcer has brought and is diligently  
6 prosecuting the claims alleged in the Notice. On June 28, 2021, Ferreiro filed a complaint (the  
7 “Complaint”) in the matter.

8           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
9 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
10 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
11 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
12 of all claims which were or could have been raised in the Complaint based on the facts alleged  
13 therein and/or in the Notice.

14           1.5     Defendant denies the material allegations contained in Ferreiro’s Notice and  
15 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
16 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
17 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
18 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
19 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
20 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

21     **2.     DEFINITIONS**

22           2.1     **Covered Products.** The term “Covered Products” means RealTree EZ hangers that  
23 are manufactured, distributed and/or offered for sale in California by Jordan Outdoor.

24           2.2     **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
25 entered as a Judgment of the Court.  
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1                   **3. INJUNCTIVE RELIEF: WARNINGS**

2                   3.1       **Reformulation of Covered Products.** As of the Effective Date, and continuing  
3 thereafter, Covered Products that Jordan Outdoor directly manufactures, imports, distributes, sells,  
4 or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below;  
5 or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.  
6 For purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that is in  
7 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3  
8 and 3.4 shall not apply to any Reformulated Product.

9                   3.2       **Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
10 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DINP  
11 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
12 and 8270C or other methodology utilized by federal or state government agencies for the purpose  
13 of determining the phthalate content in a solid substance.

14                   3.3       **Clear and Reasonable Warning.** Where required, Jordan Outdoor shall provide  
15 Proposition 65 warnings as follows. Jordan Outdoor may use any of the following warnings in full  
16 compliance with this Section. There shall be no obligation for Defendant to provide a warning for  
17 Covered Products that enter the stream of commerce prior to the Effective Date.

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

19                   ⚠ **WARNING:** This product can expose you to chemicals including diisononyl  
20 phthalate (DINP), which is known to the State of California to cause cancer. For  
21 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

24                   ⚠ **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

25                   3.4       A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
26 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
27 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
28 triangle with a black outline, except that if the sign or label for the Covered Product does not use

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

19 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
20 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
21 Judgment or by complying with warning requirements adopted by the State of California’s Office  
22 of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

23 **3.6 Modifications to Warning Statements.** If modifications or amendments to  
24 Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning  
25 specifications different from, the specifications in this Consent Judgment, Jordan Outdoor may  
26 modify the content and delivery methods of its warnings to conform to the modified or amended  
27 provisions of Proposition 65 or its regulations.  
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1           **4. MONETARY TERMS**

2           4.1     **Civil Penalty.** Jordan Outdoor shall pay \$5,000.00 as a Civil Penalty pursuant to  
3 Health 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  
5 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
6 § 25249.12(d).

7                     4.1.1 Within ten (10) business days of the Effective Date, Jordan Outdoor shall  
8 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of  
9 \$3,750.00; and to (b) "Brodsky & Smith in Trust for Ferreiro" in the amount of \$1,250.00.

10 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment  
11 address:

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

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

17                     For United States Postal Service Delivery:

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

21                     For Non-United States Postal Service Delivery:

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

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

1           4.2     **Attorneys' Fees.** Within ten (10) business days of the Effective Date, Jordan  
2 Outdoor shall pay \$52,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete  
3 reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing  
4 this matter to Jordan Outdoor attention, litigating and negotiating and obtaining judicial approval  
5 of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

6     **5.     RELEASE OF ALL CLAIMS**

7           5.1     This Consent Judgment is a full, final, and binding resolution between Ferreiro  
8 acting on his own behalf, and on behalf of the public interest, and Jordan Outdoor, and its parents,  
9 shareholders, members, directors, officers, managers, employees, representatives, agents,  
10 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
11 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
12 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
13 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
14 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for  
15 violations of Proposition with respect to any Covered Products manufactured, distributed, or sold  
16 by Jordan Outdoor prior to the Effective Date. It is the Parties' intention that this Consent Judgment  
17 shall have preclusive effect such that no other actions by private enforcers, whether purporting to  
18 act in his, her, or its interests or the public interest shall be permitted to pursue and/or take any  
19 action with respect to any violation of Proposition 65 that was alleged in the Complaint, or that  
20 could have been brought pursuant to the Notice against Jordan Outdoor and/or the Downstream  
21 Releasees of the Covered Products ("Proposition 65 Claims"). Compliance with the terms of this  
22 Consent Judgment constitutes compliance with Proposition 65 with regard to 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/or 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 Jordan Outdoor, Defendant Releasees, and Downstream Releasees from  
27 any 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 Jordan Outdoor, Defendant Releasees  
5 or 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  
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
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 Jordan Outdoor 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/or 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  
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1 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
2 to the extent that, Covered Products are so affected.

3 **8. NOTICES**

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

8 For Defendant:

9 Lauren Deeb  
10 Nelson Mullins Riley & Scarborough LLP  
11 19191 South Vermont Ave.  
12 Torrance, CA 90502

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: 1/24/22  
By: Anthony Ferrero  
ANTHONY FERRERO

Date: 1-11-22  
By: Lin B. Dube  
JORDAN OUTDOOR ENTERPRISES,  
LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court