

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 v.

14 JORDAN OUTDOOR ENTERPRISES, LTD.,
15 THE HOME DEPOT, INC.,
16 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 #:

17 **1. INTRODUCTION**

18 1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony
19 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Jordan Outdoor
20 Enterprises, Ltd. (“Jordan Outdoor” or “Defendant”) with Ferreiro and Defendant collectively
21 referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in
22 California that seeks to promote awareness of exposures to toxic chemicals and improve human
23 health by reducing or eliminating hazardous substances contained in consumer products. Jordan
24 Outdoor is alleged to be a person in the course of doing business for purposes of Proposition 65,
25 Cal. Health & Safety Code §§ 25249.6 et seq.

26 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
27 individuals to diisononyl phthalate (DINP) from its sales of RealTree EZ hangers without providing
28 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

2. **DEFINITIONS**

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

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

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
16 full compliance with this Section.— There shall be no obligation for Defendant to provide a warning
17 for 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.

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.

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.
28

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Jordan Outdoor shall pay \$2,000.00 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 \$1,500.00; and to (b) "Brodsky & Smith in Trust for Ferreiro" in the amount of \$500.00. Payment
10 owed to Ferreiro pursuant to this Section shall be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky & Smith
13 Two Bala Plaza, Suite 805
 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
 P.O. Box 4010
 Sacramento, CA-95812-4010

20 For Non-United States Postal Service Delivery:

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

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

26 **4.2 Attorneys' Fees.** Within ten (10) business days of the Effective Date, Jordan
27 Outdoor shall pay \$52,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete
28

1 reimbursement for Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing
2 this matter to Jordan Outdoor attention, litigating and negotiating and obtaining judicial approval
3 of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
6 acting on his own behalf, and on behalf of the public interest, and Jordan Outdoor, and its parents,
7 shareholders, members, directors, officers, managers, employees, representatives, agents,
8 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
9 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
10 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
11 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
12 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
13 violations of Proposition 65 based on exposure to DINP from use of the Covered Products
14 manufactured, distributed, or sold by Jordan Outdoor prior to the Effective Date as set forth in the
15 Notice. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that
16 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
17 public interest shall be permitted to pursue and/or take any action with respect to any violation of
18 Proposition 65 based on exposure to DINP from use of the Covered Products that was alleged in
19 the Complaint, or that could have been brought pursuant to the Notice against Jordan Outdoor
20 and/or the Downstream Releasees ("Proposition 65 Claims"). Compliance with the terms of this
21 Consent Judgment constitutes compliance with Proposition 65 with regard to exposure to 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/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,
28

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
27

28

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

14 For Ferreiro:

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

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

27 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
28 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
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.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

AGREED TO:

Date: 3/4/22

Date: 2-24-22

By: Anthony Ferreiro
ANTHONY FERREIRO

By: B. D. Dub...
JORDAN OUTDOOR ENTERPRISES,
LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court