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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 SCHEELS ALL SPORTS, INC.,

15 Defendant.

Case No.: CGC-22-597563

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: December 18, 2023

Hearing Time: 9:30 AM

Complaint Filed: January 11, 2022

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff
3 Anthony Ferreiro acting on behalf of the public interest (“Plaintiff” or “Ferreiro”) and Defendant
4 Scheels All Sports, Inc. (“Scheels” 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. Scheels
8 is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
9 & 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 (a) *Itasca*® chest waders, UPC
12 # 025593909073, (b) *Anglers’ Choice*® pliers grips, UPC # 769967040022, and (c) *Rover*®
13 bicycle child trailers, # 810015700136, without providing a clear and reasonable exposure warning
14 pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the
15 State of California to cause cancer and birth defects or other reproductive harm.

16 Ferreiro further alleges that Defendant has exposed individuals to diisononyl phthalate
17 (DINP) from its sales of *BiKASE*® Handy Andy 5 phone cases, UPC # 8 59195 00331 6, without
18 providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed
19 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

20 1.3 **Notices of Violation/Action.** On or about January 21, 2021, Ferreiro served Scheels
21 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
22 pursuant to Health & Safety Code §25249.7(d) (the “January Notices”), alleging that Defendant
23 violated Proposition 65 by failing to warn consumers and customers that use of (a) *Itasca*® chest
24 waders, UPC # 025593909073, (b) *Anglers’ Choice*® pliers grips, UPC # 769967040022, and (c)
25 *Rover*® bicycle child trailers, # 810015700136, could expose users in California to DEHP. No
26 public enforcer has brought and is diligently prosecuting the claims alleged in the January Notices.

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1 On or about February 3, 2021, Ferreiro served Scheels and various public enforcement
2 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
3 §25249.7(d) (the “February Notice”), alleging that Defendant violated Proposition 65 by failing to
4 warn consumers and customers that use of *BiKASE*® Handy Andy 5 phone cases, UPC # 8 59195
5 00331 6, could expose users in California to DINP. No public enforcer has brought and is diligently
6 prosecuting the claims alleged in the February Notice.

7 1.4 The January Notices and the February Notice are herein referred to as the “Notices.”

8 1.5 On January 11, 2022, Ferreiro filed a complaint (the “Complaint”) in the matter. On
9 March 10, 2023, Ferreiro filed a first amended complaint (the “Amended Complaint”).

10 1.6 **Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate that
11 this Court has jurisdiction over Defendant as to the allegations contained in the Amended
12 Complaint filed in this matter, that venue is proper in the County of San Francisco, and that this
13 Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment
14 pursuant to Proposition 65 and Code of Civil Procedure §664.6 as a full and final binding resolution
15 of all claims which were or could have been raised in the Amended Complaint based on the facts
16 alleged therein and in the Notices.

17 1.7 **No Admission.** Defendant denies the material allegations contained in Ferreiro’s
18 Notices, Complaint, and Amended Complaint and maintains that it has not violated Proposition 65,
19 and that all of the products that it has sold or distributed for sale in California, including the Covered
20 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
21 be construed as an admission by Defendant of any fact, finding, issue of law, conclusion of law, or
22 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
23 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
24 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
25 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

26 **2. DEFINITIONS**

27 2.1 **Covered Products.** The term “Covered Products” means (a) *Itasca*® chest waders,
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1 UPC # 025593909073, (b) *Anglers' Choice*® pliers grips, UPC # 769967040022, and (c) *Rover*®
2 bicycle child trailers, # 810015700136, and (d) *BiKASE*® Handy Andy 5 phone cases, UPC # 8
3 59195 00331 6, that are manufactured, distributed, shipped into California, and/or offered for sale
4 in California by Scheels.

5 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
6 entered as a Judgment of the Court.


7 **3. INJUNCTIVE RELIEF: WARNINGS**

8 3.1 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
9 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
10 §§ 3.1 and 3.2 herein must be provided for all Covered Products that Defendant manufacturers,
11 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
12 to provide a warning for Covered Products that enter the stream of commerce prior to the date this
13 Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or
14 **Alternative Warning** described below in §§ 3.1(a), (b), (c), or (d), respectively:


15 (a) **Warning.** The “Warning” for (i) *Itasca*® chest waders, UPC # 025593909073, (ii)
16 *Anglers' Choice*® pliers grips, UPC # 769967040022, and (iii) *Rover*® bicycle child
17 trailers, # 810015700136, shall consist of the statement:

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

21 (b) **Alternative Warning:** Scheels may, but is not required to, use the alternative short-
22 form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

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

24 (c) **Warning.** The “Warning” for *BiKASE*® Handy Andy 5 phone cases, UPC # 8
25 59195 00331 6, shall consist of the statement:

26  **WARNING:** This product can expose you to chemicals including diisononyl
27 phthalate (DINP), which is known to the State of California to cause cancer. For
28 more information go to www.P65Warnings.ca.gov.

1 (d) **Alternative Warning:** Scheels may, but is not required to, use the alternative short-
2 form warning as set forth in this § 3.1(d) (“**Alternative Warning**”) as follows:

3 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

4 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
5 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
6 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
7 triangle with a black outline, except that if the sign or label for the Covered Product does not use
8 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
9 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
10 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign, or
11 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
12 displayed with such conspicuousness, as compared with other words, statements, or designs as to
13 render it likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
15 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
16 the use of the Covered Product and shall be at least the same size as those other safety warnings.

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

3 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
4 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
5 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
6 Covered Product and exposures at issue after the Effective Date. If a consumer product sign, label,
7 or shelf tag used to provide a warning includes consumer information in a foreign language, Scheels
8 shall provide the **Warning** in the foreign language.

9 **4. MONETARY TERMS**

10 **4.1 Civil Penalty.** Scheels shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
11 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
12 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
13 Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

14 4.1.1 Within fourteen (14) days of the Effective Date, Scheels shall issue two
15 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
16 to (b) “Anthony Ferreiro” in the amount of \$500.00. Payment owed to Ferreiro pursuant to this
17 Section shall be delivered to the following payment address:

18 Evan J. Smith, Esquire
19 Brodsky Smith
20 Two Bala Plaza, Suite 805
21 Bala Cynwyd, PA 19004

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

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010
 Sacramento, CA 95812-4010

 For Non-United States Postal Service Delivery:

 Mike Gyurics

1 Fiscal Operations Branch Chief
2 Office of Environmental Health Hazard Assessment
3 1001 I Street
4 Sacramento, CA 95814

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

7 4.2 **Attorneys' Fees.** Within fourteen (14) days of the Effective Date, Scheels shall pay
8 \$23,000.00 to "Brodsky Smith" as complete reimbursement for Ferreiro's attorneys' fees and costs
9 incurred as a result of investigating, bringing this matter to the attention of Scheels, litigating,
10 negotiating, and obtaining judicial approval of a settlement in the public interest, pursuant to Code
11 of Civil Procedure § 1021.5.

12 **5. RELEASE OF ALL CLAIMS**

13 5.1 **Ferreiro's Release of Claims on Behalf of the Public Interest.** This Consent
14 Judgment is a full, final, and binding resolution between Ferreiro acting on his own behalf, and on
15 behalf of the public interest, and Scheels, and its parents, shareholders, members, directors, officers,
16 managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,
17 partners, sister companies, and affiliates, and their predecessors, successors and assigns
18 ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or
19 indirectly distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
20 distributors, wholesalers, customers, licensors, licensees and retailers, including but not limited to
21 each of their parents, shareholders, members, directors, officers, managers, employees,
22 representatives, agents, attorneys, subdivisions, subsidiaries, partners, sister companies, affiliates,
23 franchisees, and cooperative members, and their predecessors, successors, and assigns
24 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
25 DEHP and/or DINP from Covered Products manufactured, distributed, or sold by Scheels prior to
26 the Effective Date as set forth in the Notices. It is the Parties' intent that this Consent Judgment
27 shall have preclusive effect such that no other person or entity, whether purporting to act in his,
28 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 the failure to warn regarding exposure to DEHP

1 and/or DINP from use of Covered Products that was alleged in the Complaint and Amended
2 Complaint, or that could have been brought pursuant to the Notices against Scheels and the
3 Downstream Releasees (“Proposition 65 Claims”). Scheels’ compliance with the terms of this
4 Consent Judgment constitutes compliance with Proposition 65 by Scheels with regard to exposure
5 to DEHP and/or DINP from the Covered Products.

6 **5.2 Ferreiro’s Individual Release of Claims.** In addition to the foregoing, Ferreiro, on
7 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
8 assignees, and *not* in his representative capacity, hereby waives all rights to institute or participate
9 in, directly or indirectly, any form of legal action and releases Scheels, Defendant Releasees, and
10 Downstream Releasees from any and all manner of actions, causes of action, claims, demands,
11 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,
12 losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law
13 or equity, fixed or contingent, now or in the future, with respect to any alleged violations of
14 Proposition 65 related to or arising from the failure to warn of exposure to DEHP and/or DINP
15 from use of Covered Products manufactured, distributed, or sold by Scheels, Defendant Releasees,
16 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
17 Ferreiro acknowledges that this Consent Judgment is expressly intended to cover and include all
18 such claims up through the Effective Date and including claims currently not known to the Parties,
19 and specifically waives any and all rights and benefits which he now has, or in the future may have,
20 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
21 follows:

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

26 **5.3** Scheels waives any and all claims against Ferreiro, his attorneys and other
27 representatives, for any and all actions taken, or statements made (or those that could have been
28 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
2 and with respect to Covered Products.

3 **6. INTEGRATION**

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

8 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 For Defendant:

20 Kendra Lounsberry
21 Barnes & Thornburg LLP
22 2029 Century Park East, Ste. 300
Los Angeles, CA 90067

23 And

24 For Ferreiro:

25 Evan Smith
26 Brodsky Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

8 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
9 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
10 Defendant agrees it shall support approval of such Motion. If any third-party objection to the motion
11 is filed, Ferreiro and Scheels agree to work together to file a reply and appear at any hearing.

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

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

20 **11. MODIFICATION**

21 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
22 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

23 **12. ATTORNEY'S FEES**

24 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
25 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

26 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
27 pursuant to law.

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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: _____

Date: 7-25-2023

By: _____
ANTHONY FERREIRO

By: [Signature]
SCHEELS ALL SPORTS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

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

10 **AGREED TO:**

AGREED TO:

11
12 Date: 10/30/23

Date: _____

13
14 By: Anthony Ferreira
ANTHONY FERREIRO

By: _____
SCHEELS ALL SPORTS, INC.

15
16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17
18
19 Dated: _____

Judge of Superior Court