

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 ANTHONY FERREIRO

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

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 ROBERT BOSCH TOOL CO., WALMART,
15 INC.,

16 Defendant.

Case No. CGC-22-597648

[PROPOSED] CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: March 21, 2024

Hearing Time: 9:30 AM

Complaint Filed: January 14, 2022

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 (“Ferreiro”) and Robert Bosch Tool Corporation, sued
20 as Robert Bosch Tool Co. (“Robert Bosch” or “Defendant”) with Ferreiro and Defendant
21 collectively referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual
22 residing in California that seeks to promote awareness of exposures to toxic chemicals and improve
23 human health by reducing or eliminating hazardous substances contained in consumer products.
24 Robert Bosch is alleged to be a person in the course of doing business for purposes of Proposition
25 65, Cal. Health & Safety Code §§ 25249.6 et seq.

26 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
27 individuals to bisphenol A (BPA) from its sales of Bosch Impact Tough Drill/Drive Custom Cases
28 without providing a clear and reasonable exposure warning pursuant to Proposition 65. BPA is listed

1 under Proposition 65 as a chemical known to the State of California to cause birth defects or other
2 reproductive harm.

3 1.3 **Notice of Violation/Complaint.** On or about April 22, 2021, Ferreiro served Robert
4 Bosch, Walmart Apollo, LLC, Walmart, Inc. (collectively, “Walmart”), and various public
5 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
6 Safety Code § 25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing
7 to warn consumers and customers that the use of Bosch Impact Tough Drill/Drive Custom Cases
8 exposes users in California to BPA. No public enforcer has brought and is diligently prosecuting the
9 claims alleged in the Notice. On January 14, 2022, Ferreiro filed a complaint (the “Complaint”) in
10 the matter.

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

17 1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and
18 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
19 shall be construed as an admission by Defendant of any material allegation of the Complaint (each
20 and every allegation of which Defendant denies), any fact, conclusion of law, issue of law or
21 violation of law, including without limitation, any admission concerning any violation of Proposition
22 65 or any other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
23 “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and
24 Safety Code § 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall
25 constitute or be construed as an admission by Defendant of any fact, conclusion of law, issue of law,
26 or violation of law, or of fault, wrongdoing, or liability by any Defendant, its officers, directors,
27 employees, or parent, subsidiary, or affiliated corporations, or be offered or admitted as evidence in
28

1 any administrative or judicial proceeding or litigation in any court, agency, or forum. Nothing in this
2 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of
3 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed
4 as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
5 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
6 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

7 **2. DEFINITIONS**

8 2.1 **Covered Products.** The term "Covered Products" means products identified as UPC
9 No. 000346494839 that are manufactured, distributed and/or offered for sale in California.

10 2.2 **Effective Date.** The term "Effective Date" means the date that Plaintiff serves
11 Defendant with notice that the Court has entered the Consent Judgment as a Judgment of the Court.

12 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

13 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
14 signed by both Parties, and continuing thereafter, Covered Products that Robert Bosch directly
15 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
16 reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
17 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
18 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
19 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
20 Product.

21 3.2 **Reformulation Standard.** "Reformulated Products" shall mean any Covered
22 Products subject to this Settlement Agreement that achieve a wipe result equal to, or less than, 3
23 micrograms of BPA.

24 3.2.1 **Wipe Test Protocol.** The "Wipe Test Protocol" for determining if a Covered
25 Product qualifies as a Reformulated Product is as follows:

1 color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than
2 the height of the word "WARNING:". The **Warning** or **Alternative Warning** shall be affixed to or
3 printed on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic
4 device or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with
5 such conspicuousness, as compared with other words, statements, or designs as to render it likely to
6 be read and understood by an ordinary individual under customary conditions of purchase or use.
7 The **Warning** or **Alternative Warning** may be contained in the same section of the packaging,
8 labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the
9 Covered Product and shall be at least the same size as those other safety warnings.

10 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
11 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
12 Defendant offers Covered Products for sale to consumers in California. The requirements of this
13 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink
14 using the word "WARNING," appears on the product display page, or by otherwise prominently
15 displaying the warning to the purchaser prior to completing the purchase. To comply with this
16 Section, Defendant shall (a) post the **Warning** or **Alternative Warning** on its own website, if
17 applicable, and, if it has the ability to do so, on the websites of third-party internet sellers that
18 Defendant has written agreements with; and (b) if Defendant does not have the ability to post the
19 **Warning** or **Alternative Warning** on the websites of third-party internet sellers that it has written
20 agreements with, Defendant shall provide such third-party internet sellers with written notice of the
21 warning requirements of this Section. Third-party internet sellers of the Covered Product that have
22 been provided with written notice are not released, prospectively, following the Effective Date, in
23 Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

24 3.6 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
25 compliance with this Consent Judgment by either adhering to §3 of this Consent Judgment or by
26 complying with warning requirements adopted by the State of California's Office of Environmental
27 Health Hazard Assessment ("OEHHA") applicable to the Covered Product and the exposures at
28

1 issue after the Effective Date. If the label used to provide the **Warning or Alternative Warning**
2 includes "consumer information," as that term is defined in Title 27, California Code of Regulations,
3 Section 25600.1(c) as it may be amended from time to time, about the product in a language other
4 than English, Robert Bosch shall provide the **Warning or Alternative Warning** in that language in
5 addition to English in accordance with applicable warning regulations adopted by OEHHA.

6 **4. MONETARY TERMS**

7 4.1 **Civil Penalty.** Robert Bosch shall pay \$3,000.00 as a Civil Penalty pursuant to Health
8 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
9 Safety Code §§ 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
10 remaining 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety
11 Code § 25249.12(d).

12 4.1.1 Within thirty (30) days of the Effective Date, Robert Bosch shall issue two
13 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to
14 (b) "Anthony Ferreiro" in the amount of \$750.00. Payment owed to Ferreiro pursuant to this Section
15 shall be delivered to the following payment address:

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

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

22 For United States Postal Service Delivery:

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

28 For Non-United States Postal Service Delivery:

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

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

3 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, and upon provision of
4 a completed W-9 and payment instructions by Ferreiro's attorneys, Defendant shall pay \$27,000.00
5 to Brodsky Smith as complete reimbursement for Ferreiro's attorneys' fees and costs incurred as a
6 result of investigating, bringing this matter to Defendant's attention, litigating and negotiating and
7 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure
8 § 1021.5.

9 **5. RELEASE OF ALL CLAIMS**

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

1 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
2 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Defendant, Defendant Releasees, and Downstream Releasees from any and
5 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
8 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
9 Products manufactured, distributed, or sold by Robert Bosch, Defendant Releasees or Downstream
10 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
11 specifically waives any and all rights and benefits which he now has, or in the future may have,
12 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
13 follows:

14
15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
16 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
17 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.

18
19 Ferreiro understands and acknowledges that the significance and consequence of this waiver
20 of California Civil Code section 1542 is that even if he suffers future damages arising out of or
21 resulting from, or related directly or indirectly to, in whole or in part, Proposition 65 Claims arising
22 from any violation of Proposition 65 or any other statutory or common law regarding the failure to
23 warn about exposure to BPA from the Covered Products, including but not limited to any exposure
24 to, or failure to warn with respect to exposure to BPA from the Covered Products, Ferreiro will not
25 be able to make any claim for those damages against Defendant, Defendant Releasees, and
26 Downstream Releasees. Furthermore, Ferreiro acknowledges that he intends these consequences for
27 any such Proposition 65 Claims arising from any violation of Proposition 65 or any other statutory or
28 common law regarding the failure to warn about exposure to BPA from Covered Products as may

1 exist as of the date of this release but which she does not know exist, and which, if known, would
2 materially affect his decision to enter into this Consent Judgment, regardless of whether his lack of
3 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

4 5.3 Defendant waives any and all claims against Ferreiro, his attorneys and other
5 representatives, for any and all actions taken, or statements made (or those that could have been
6 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
7 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
8 and/or with respect to exposure to BPA from Covered Products.

9 **6. INTEGRATION**

10 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
11 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
12 No representations or terms of agreement other than those contained herein exist or have been made
13 by any Party with respect to the other Party or the subject matter hereof.

14 **7. GOVERNING LAW**

15 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
17 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
18 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
19 Covered Products are so affected.

20 **8. NOTICES**

21 8.1 Unless specified herein, all correspondence and notices required to be provided
22 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
23 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
24 the other party at the following addresses:

1 For Defendant:

2 President
3 Robert Bosch Tool Corporation
4 1800 W. Central Road
5 Mt. Prospect IL 60053

6 With a copy to:

7 Legal Department
8 Robert Bosch Tool Corporation
9 1800 W. Central Road
10 Mt. Prospect IL 60053

11 And

12 For Ferreiro:

13 Evan Smith
14 Brodsky Smith
15 9595 Wilshire Blvd., Ste. 900
16 Beverly Hills, CA 90212

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and
22 the same document.

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

24 **APPROVAL**

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

28 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
Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
days, the case shall proceed on its normal course.

1 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
4 its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6 11.1 This Consent Judgment may be modified only by further stipulation of the Parties and
7 the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **12. ENFORCEMENT OF CONSENT JUDGMENT**

9 12.1 Only the Parties may enforce the terms of this Consent Judgment.

10 12.2 Either Party may by motion seek to enforce the terms of this Consent Judgment.
11 However, prior to filing any such motion, the Party seeking to enforce this Consent Judgment shall
12 provide the alleged violating Party with a written notice setting forth the detailed factual and legal
13 basis for the alleged violations ("Notice of Violation"). The Parties shall then meet and confer in
14 good faith during the sixty (60) day period following the date the Notice of Violation was sent in an
15 effort to try to reach agreement on an appropriate cure, penalty, and/or attorneys' fees related to the
16 alleged violation (or the Parties might agree that there was no violation). If no agreement can be
17 reached among the Parties during the 60-day period, the Party seeking to enforce the provisions of
18 this Consent Judgment may thereafter move forward with filing a motion with the Court.

19 12.3 In any action to enforce the terms of this Consent Judgment, the prevailing party shall
20 be entitled to recover its reasonable attorneys' fees and costs associated with bringing or defending
21 such action. If the moving party is the prevailing party, the moving party must comply with the
22 procedures set forth in Paragraph 12.3 above to recover any fees or costs under this Paragraph.

23 **13. RETENTION OF JURISDICTION**

24 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
25 Judgment.

1 **14. AUTHORIZATION**

2 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

8 **AGREED TO:**

9

10 Date: _____

11 By: _____
12 ANTHONY FERREIRO

13

14

15

15 **AGREED TO:**

16

16 Date: 11/16/23

16 Date: 11/16/23

17

17 By: [Signature]
18 ROBERT BOSCH TOOL CORPORATION

17 By: [Signature]
18 ROBERT BOSCH TOOL CORPORATION

19

20

21

22

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

24

25 Dated: _____

Judge of Superior Court

26

27

28

1 **14. AUTHORIZATION**

2 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
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: 2 / 1 / 24
By: *Anthony Ferreiro*
ANTHONY FERREIRO

AGREED TO:

Date: _____ Date: _____
By: _____ By: _____
ROBERT BOSCH TOOL CORPORATION ROBERT BOSCH TOOL CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court