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*Attorneys for Plaintiff*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

ANTHONY FERREIRO,  
Plaintiff,  
v.  
CUSTOM ACCESSORIES, INC.,  
Defendant.

Case No.: CGC-21-595961  
**CONSENT JUDGMENT**  
Judge: Ethan P. Schulman  
Dept.: 302  
Hearing Date: January 10, 2022  
Hearing Time: 9:30 AM  
Reservation #:

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 Custom Accessories,  
4       Inc. (“Custom Accessories” or “Defendant”) with Ferreiro and Defendant collectively referred to  
5       as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California that  
6       seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing  
7       or eliminating hazardous substances contained in consumer products. Custom Accessories is  
8       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 are Pennzoil wrench - grips  
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 or about May 14, 2021, Ferreiro served Custom  
16       Accessories, and various public enforcement agencies with documents entitled “60-Day Notice of  
17       Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant  
18       violated Proposition 65 for failing to warn consumers and customers that use of Pennzoil wrench -  
19       grips expose users in California to DEHP. No public enforcer has brought and is diligently  
20       prosecuting the claims alleged in the Notice. On October 12, 2021, Ferreiro filed a complaint (the  
21       “Complaint”) in the matter.

22              **1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has**  
23       jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
24       venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
25       enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
26       of all claims which were or could have been raised in the Complaint based on the facts alleged  
27       therein 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 are Pennzoil wrench -  
10 grips that are manufactured, distributed and/or offered for sale in California by Custom  
11 Accessories.

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

14          **3.     INJUNCTIVE RELIEF: WARNINGS**

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

23          3.2     **Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP  
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose  
27 of determining the phthalate content in a solid substance.

28

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

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

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

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

14           ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

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

10           **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
11 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
12 Judgment or by complying with warning requirements adopted by the State of California’s Office  
13 of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date. If subsequently  
14 enacted changes to Proposition 65 or its implementing regulations require the use of additional or  
15 different information on any warning, the Parties agree that the new safe harbor warning may be  
16 used in place of the warning set forth herein.

17 **4. MONETARY TERMS**

18           **4.1 Civil Penalty.** Custom Accessories shall pay \$2,000.00 as a Civil Penalty pursuant  
19 to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California  
20 Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining  
21 25% of the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
22 § 25249.12(d).

23           **4.1.1** Within ten (10) days of the Effective Date, Custom Accessories shall issue  
24 two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00;  
25 and to (b) “Brodsky Smith in Trust for Ferreiro” in the amount of \$500.00. Payment owed to  
26 Ferreiro pursuant to this Section shall be delivered to the following payment address:

27           Evan J. Smith, Esquire  
28           Brodsky Smith

1 Two Bala Plaza, Suite 805  
2 Bala Cynwyd, PA 19004

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

5 For United States Postal Service Delivery:

6 Mike Gyurics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 P.O. Box 4010  
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics  
13 Fiscal Operations Branch Chief  
14 Office of Environmental Health Hazard Assessment  
15 1001 I Street  
16 Sacramento, CA 95814

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

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Custom Accessories  
20 shall pay \$25,500.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for  
21 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to  
22 Custom Accessories attention, litigating and negotiating and obtaining judicial approval of a  
23 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
26 acting on his own behalf, and on behalf of the public interest, and Custom Accessories, and its  
27 parents, shareholders, owners, members, directors, officers, managers, employees, representatives,  
28 agents, attorneys, licensees, licensors, divisions, subdivisions, subsidiaries, partners, sister  
companies, and affiliates, and their predecessors, successors, and assigns ("Defendant Releasees"),  
and all entities from whom they obtain and to whom they directly or indirectly distribute or sell  
Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,  
customers, licensors, licensees, franchisees, cooperative members, and retailers, including but not

1 limited to, Ace Hardware Corporation, and their respective subsidiaries, affiliates and parents,  
2 customers of affiliates, franchisees, cooperative members, licensors, and licensees (“Downstream  
3 Releasees”), from all claims for violations of Proposition 65 based on failure to warn about  
4 exposure to DEHP from Products, as set forth in the Notice, with respect to any Covered Products  
5 manufactured, distributed, or sold by Custom Accessories prior to the Effective Date. It is the  
6 Parties’ intention that this Consent Judgment shall have preclusive effect such that no other actions  
7 by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall  
8 be permitted to pursue and/or take any action with respect to any violation of Proposition 65 that  
9 was alleged in the Complaint, or that could have been brought pursuant to the Notice against  
10 Custom Accessories and/or the Downstream Releasees of the Covered Products (“Proposition 65  
11 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with  
12 Proposition 65 with regard to the Covered Products.

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

26           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
27           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
28           EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
              RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
2 DEBTOR OR RELEASED PARTY.

3 5.3 Custom Accessories waives any and all claims against Ferreiro, his attorneys and  
4 other representatives, for any and all actions taken or statements made (or those that could have  
5 been taken or made) by Ferreiro and his attorneys and other representatives, whether in the course  
6 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
and/or with respect to Covered Products.

7 **6. INTEGRATION**

8 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
9 any and all prior negotiations and understandings related hereto shall be deemed to have been  
10 merged within it. No representations or terms of agreement other than those contained herein exist  
11 or have been made by any Party with respect to the other Party or the subject matter hereof.

12 **7. GOVERNING LAW**

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

18 **8. NOTICES**

19 8.1 Unless specified herein, all correspondence and notices required to be provided  
20 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
21 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
22 by the other party at the following addresses:

23 For Defendant:

24 Joshua G. Simon  
25 Call & Jensen  
26 610 Newport Center Drive, Suite 700  
Newport Beach, CA 92660

27 And

28 For Ferreiro:



1 Evan Smith  
2 Brodsky Smith  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
10 the same document.

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

12 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
13 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
14 Defendant agrees it shall support approval of such Motion.

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

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

23 **11. MODIFICATION**

24 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
25 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

26 **12. ATTORNEY'S FEES**

27 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
28 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
5 Consent Judgment.

6 **14. AUTHORIZATION**

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

12 **AGREED TO:**

**AGREED TO:**

13  
14 Date:

*10/1/2021*

Date:

*10/28/2021*

15  
16 By:

*Anthony Ferrero*  
ANTHONY FERRERO

By:

*Edward Matthew*  
CUSTOM ACCESSORIES, INC.  
*Edward Matthew, President*

17  
18  
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20 Dated:

Judge of Superior Court