

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9465 Wilshire Blvd., Ste. 300
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 DONATUS MCCOY,

12 Plaintiff,

13 v.

14 BRP US INC., JET WORLD POWERSPORTS,

15 Defendants.

Case No.: CGC-23-604294

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: October 25, 2024

Hearing Time: 9:30 AM

Complaint Filed: January 27, 2023

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between the Estate of
3 Donatus McCoy acting on behalf of the public interest (hereinafter “McCoy”) and BRP US Inc.
4 (“BRP” or “Defendant”) with McCoy and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” McCoy is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. BRP is alleged to be a person in the course
8 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** McCoy alleges that Defendant has exposed
10 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of BRP’s Ratchet Tie-Downs, Part
11 Number 715008309, without providing a clear and reasonable exposure warning pursuant to
12 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
13 California to cause cancer and birth defects or other reproductive harm.

14 1.3 **Notice of Violation/Action.** On or about February 4, 2022, McCoy served BRP US
15 Inc., Bombardier Recreational Products Inc. Jet World PowerSports, and various public
16 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
17 Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing
18 to warn consumers and customers that use of Ratchet Tie-Downs, Part Number 715008309 expose
19 users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims
20 alleged in the Notice. On January 27, 2023, McCoy filed a complaint (the “Complaint”).

21 1.3.1 Plaintiff Donatus McCoy passed away on or about January 4, 2024. An estate
22 was created and letters of administration were granted to the administrator, Katrina Sanchez,
23 daughter of Donatus McCoy, on or about May 15, 2024 by the Court in the Superior Court of
24 California – Los Angeles County. The parties filed herein a stipulation to substitute Plaintiff
25 Donatus McCoy with that of Plaintiff the Estate of Donatus McCoy on July 3, 2024, which was
26 granted by the Court on July 9, 2024.

1 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
2 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
3 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
4 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
5 of all claims which were or could have been raised in the Action based on the facts alleged therein
6 and in the Notice.

7 1.5 Defendant denies the material allegations contained in McCoy's Notice and
8 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
9 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
10 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
11 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
12 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
13 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

14 **2. DEFINITIONS**

15 2.1 **Covered Products.** The term "Covered Products" means *BRP's Ratchet Tie-*
16 *Downs*, Part Number 715008309, that are manufactured, distributed, shipped into California and
17 offered for sale in California by BRP or others.

18 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
19 entered as a Judgment of the Court.

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

21 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
22 thereafter, Covered Products that BRP directly manufactures, imports, distributes, sells, or offers
23 for sale in California shall either be: (a) reformulated Products pursuant to § 3.2, below; or (b)
24 labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
25 purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product that is in
26 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
27 and 3.4 shall not apply to any Reformulated Product.

28

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

6 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
7 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
8 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
9 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
10 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
11 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
12 described in §§ 3.3(a) or (b), respectively:

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

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

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

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

20 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
21 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
22 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
23 triangle with a black outline, except that if the sign or label for the Covered Product does not use
24 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
25 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
26 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
27 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
28 displayed with such conspicuousness, as compared with other words, statements, or designs as to

1 render it likely to be read and understood by an ordinary individual under customary conditions of
2 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
3 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
4 the use of the Covered Product and shall be at least the same size as those other safety warnings.

5 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
6 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
7 BRP offers Products for sale to consumers in California. The requirements of this Section shall be
8 satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
9 "**WARNING**," appears on the product display page, or by otherwise prominently displaying the
10 warning to the purchaser prior to completing the purchase. To comply with this Section, BRP shall
11 (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so,
12 on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the
13 **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such
14 sellers with written notice in accordance with Title 27, California Code of Regulations, § 25600.2.
15 Third-party internet sellers of the Covered Product that have been provided with written notice in
16 accordance with Title 27, California Code of Regulations, § 25600.2 are not released in Section 5
17 of this Consent Judgment if they fail to meet the warning requirements herein.

18 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
19 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
20 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
21 Covered Product and exposures at issue after the Effective Date. Where a consumer product sign,
22 label or shelf tag used to provide a warning includes consumer information in a language other than
23 English, the warning must also be provided in that language in addition to English.

1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Within ten (10) days of the Effective Date and delivery to BRP’s
3 counsel of McCoy’s taxpayer identification number, BRP shall pay \$2,000.00 as a Civil Penalty
4 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
5 California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the
6 remaining 25% of the Civil Penalty remitted to McCoy, as provided by California Health & Safety
7 Code § 25249.12(d).

8 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date and delivery to BRP’s
9 legal counsel of Brodsky Smith’s taxpayer identification number, BRP shall pay \$22,500.00 to
10 Brodsky & Smith (“Brodsky Smith”) as complete reimbursement for McCoy’s attorneys’ fees and
11 costs incurred as a result of investigating, bringing this matter to the attention of BRP, litigating
12 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
13 Code of Civil Procedure § 1021.5.

14 4.3 Payment owed to McCoy, OEHHA, and Brodsky Smith pursuant to this Section
15 may be delivered in a single check or wire transfer payment in the total amount of \$24,500.00, and
16 shall be delivered to legal counsel for McCoy at the following payment address:

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

20 Brodsky Smith, as legal counsel for McCoy, shall be responsible for delivering to McCoy and
21 OEHHA their respective portions of the Civil Penalty as set forth in Section 4.1, above. Upon
22 BRP’s delivery of the total settlement payment in the amount of \$24,500 pursuant to this Section,
23 BRP’s monetary obligations under this Consent Judgment shall be fully satisfied.

1 4.4 **Acknowledgement of Satisfaction of Judgment.** Within ten (10) days of receipt
2 of the payment above, McCoy shall file or cause to be filed an Acknowledgement of Satisfaction
3 of Judgment (Full) on Form EJ-100, acknowledging BRP’s payment of the sums under Sections
4 4.1 and 4.2, above.

5 **5. RELEASE OF ALL CLAIMS**

6 5.1 This Consent Judgment is a full, final, and binding resolution between McCoy
7 acting on his own behalf, and on behalf of the public interest, and BRP and Jet World Powersports,
8 and their respective parents, shareholders, members, directors, officers, managers, employees,
9 representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies,
10 and affiliates, and their predecessors, successors and assigns (“Defendant Releasees”), and all
11 entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered
12 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
13 customers, licensors, licensees retailers, including but not limited to, BRP, Jet World Powersports,
14 and their respective parents, subsidiaries, and affiliates, franchisees, and cooperative members
15 (“Releasees”), of all claims for violations of Proposition 65 based on failure to warn of the exposure
16 to DEHP from use of the Covered Products manufactured, distributed, or sold by BRP prior to the
17 Effective Date. It is the Parties’ intention that this Consent Judgment shall have preclusive effect
18 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
19 or the public interest shall be permitted to pursue and take any action with respect to any violation
20 of Proposition 65 based on the failure to warn of the exposure to DEHP from use of the Covered
21 Products (“Proposition 65 Claims”). BRP’s compliance with the terms of this Consent Judgment
22 constitutes compliance by BRP with Proposition 65 with regard to warning on the exposure to
23 DEHP from use of the Covered Products.

24 5.2 In addition to the foregoing, McCoy, on behalf of himself, his past and current
25 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
26 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
27 legal action and releases BRP, Defendant Releasees, and Releasees from any and all manner of
28

1 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
2 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
3 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
4 respect to any alleged violations of Proposition 65 related to or arising from Covered Products
5 manufactured, distributed, or sold by BRP, Defendant Releasees or Releasees. With respect to the
6 foregoing waivers and releases in this paragraph, McCoy hereby specifically waives any and all
7 rights and benefits which he now has, or in the future may have, conferred by virtue of the
8 provisions of § 1542 of the California Civil Code, which provides as follows:

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

15 5.3 BRP waives any and all claims against McCoy, his attorneys and other
16 representatives, for any and all actions taken, or statements made (or those that could have been
17 taken or made) by McCoy and his attorneys and other representatives, whether in the course of
18 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
19 and with respect to Covered Products.

20 **6. COSTS OF SUIT**

21 Except as expressly provided in this Consent Judgment, the Parties and Jet World
22 Powersports shall bear their own costs of suit, including attorneys' fees, incurred in this action.

23 **7. INTEGRATION**

24 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.
28

1 **8. NOTICE TO DEFENDANT**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following address:

6 For Defendant:

7 Sean M. Sherlock
8 Snell & Wilmer
9 Plaza Tower
 600 Anton Blvd., Ste. 1400
 Costa Mesa, CA 92626

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

12 **9. NOTICE TO PLAINTIFF**

13 9.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
16 by the other party at the following address:

17
18 For McCoy:

19 Evan Smith
20 Brodsky Smith
21 9465 Wilshire Blvd., Ste. 300
 Beverly Hills, CA 90212

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

24 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

25 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
26 which shall be deemed an original, and all of which, when taken together, shall constitute one and
27 the same document.

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

3 11.1 McCoy agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **12. MODIFICATION**

15 12.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
17 Upon motion by either Party or its assignees or other successors in interest, the Court shall modify
18 or terminate this Consent Judgment to conform to Prop 65 requirements in the event Prop 65 is
19 repealed or amended. This Consent Judgment may be modified on any other ground that justice
20 may require by further stipulation of the Parties and the approval of the Court or upon the granting
21 of a motion brought to the Court by either Party.

22 **13. ATTORNEY'S FEES**

23 13.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
24 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

25 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
26 pursuant to law.

1 **14. RETENTION OF JURISDICTION**

2 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **15. AUTHORIZATION**

5 15.1 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:

9/6/24

Date: September 3rd, 2024

13
14 By:

KATRINA SANCHEZ,
ADMINISTRATRIX OF THE ESTATE OF
DONATUS MCCOY

13
14 By:

BRP US INC.

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

18
19 Dated:

Judge of Superior Court