



FILED
ALAMEDA COUNTY

MAR 31 2016

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160
8
9 *Attorneys for Plaintiff*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 GABRIEL ESPINOSA,
11 Plaintiff,
12 vs.
13 T. CHRISTY ENTERPRISES,
14 Defendant.

Case No. RG15797507

~~PROPOSED~~ ORDER APPROVING
PROPOSITION 65 SETTLEMENT AND
~~PROPOSED~~ CONSENT JUDGMENT

Judge: Frank Roesch
Dept.: 24
Hearing Date: March 17, 2016
Hearing Time: 3:45 PM
Reservation #: R-1703600

19 Plaintiff Gabriel Espinosa ("Plaintiff" or "Espinosa") and Defendant T. Christy
20 Enterprises ("T. Christy" or the "Defendant") have agreed to the terms of the settlement
21 memorialized in the [Proposed] Consent Judgment ("Consent Judgment") attached as Exhibit A
22 to the Declaration of Evan J. Smith in Support of Motion to Approve Proposition 65 Settlement
23 and Consent Judgment lodged herewith, and Plaintiffs have moved this Court for an Order
24 approving the settlement.

25 After consideration of the papers submitted and the arguments presented, the Court finds
26 that the settlement agreement set forth in the Consent Judgment meets the criteria established by
27 California Health & Safety Code § 25249.7(f)(4), in that:
28

FEB 01 2016

[PROPOSED] ORDER APPROVING PROPOSITION 65 SETTLEMENT AND [PROPOSED]
CONSENT JUDGMENT

BY FAX

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1. The injunctive relief required by the Consent Judgment complies with Proposition 65;
2. The reimbursement of fees and costs provided by the Consent Judgment is reasonable under California law; and
3. The civil penalty amount to be paid pursuant to the Consent Judgment is reasonable.

Accordingly, the Motion for Approval of the Proposition 65 Settlement is GRANTED.

IT IS SO ORDERED.

Dated: 3/31/2016



JUDGE OF THE SUPERIOR COURT



14156966

1 Evan J. Smith, Esquire (SBN 242352)
 2 Ryan P. Cardona, Esquire (SBN 302113)
 3 BRODSKY & SMITH, LLC
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CLERK OF THE SUPERIOR COURT

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5 *Attorneys for Plaintiff*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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GABRIEL ESPINOSA,
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Case No. RG15797507

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: March 17, 2016

Hearing Time: 3:45 PM

Reservation #: R-1703600

1 **1. Introduction**

2 1.1 On June 11, 2015, Gabriel Espinosa (“Espinosa”) served Ferguson Enterprises,
3 Inc., T. Christy Enterprises (“T. Christy”), and various public enforcement agencies with a
4 document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*”
5 (the “Notice”). The Notice provided T. Christy and such others, including public enforcers, with
6 notice that alleged that T. Christy was in violation of California Health & Safety Code § 25249.6
7 (“Proposition 65”), for failing to warn consumers and customers that *Christy’s Professional*
8 *Gloves 4100 Red PVC Chips ON* (the “Product”) exposed users in California to the chemicals
9 Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate (DINP). No public enforcer has
10 diligently prosecuted the allegations set forth in the Notice.

11 1.2 On December 22, 2015, Espinosa filed a Complaint for Civil Penalties and
12 Injunctive Relief (“Complaint”) in Alameda County Superior Court, Case No. RG15797507,
13 against T. Christy alleging violations of Proposition 65.

14 1.3 T. Christy is a corporation that employs more than ten persons under California
15 Health and Safety Code §25249.6.

16 1.4 Espinosa’s Complaint alleges, among other things, that T. Christy sold the Product
17 in California and/or to California citizens, that the Product contains DEHP and DINP, and that the
18 resulting exposure violated provisions of Proposition 65, by knowingly and intentionally
19 exposing persons to chemicals known to the State of California to cause both cancer and
20 reproductive toxicity, developmental, male, without first providing a clear and reasonable
21 warning to such individuals.

22 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court
23 has jurisdiction over the allegations of violations contained in the Complaint and personal
24 jurisdiction over T. Christy as to the acts alleged in the Complaint, that venue is proper in the
25 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a
26 resolution of the allegations contained in the Complaint.

27 1.6 The parties enter into this Consent Judgment pursuant to a full, final and binding
28 settlement of disputed claims between the parties as alleged in the Complaint for the purpose of

1 avoiding prolonged litigation. By execution of this Consent Judgment, T. Christy does not admit
2 any violation of Proposition 65 and specifically denies that it has committed any such violation.
3 Nothing in this Consent Judgment shall be construed as an admission by T. Christy of any fact,
4 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
5 construed as an admission by T. Christy of any fact, issue of law, or violation of law. Nothing in
6 this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that T.
7 Christy may have in any other future legal proceeding. However, this paragraph shall not
8 diminish or otherwise affect the obligations, responsibilities and duties of T. Christy under this
9 Consent Judgment.

10 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
11 date that the Consent Judgment is entered by the Court.

12 **2. Injunctive Relief**

13 2.1 Commencing on the Effective Date, and continuing thereafter, T. Christy shall
14 only ship, sell, or offer for sale in California, reformulated Product pursuant to Section 2.2 or
15 Product that is labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes
16 of this Settlement Agreement, a "Reformulated Product" is Product that meets the standard set
17 forth in Section 2.2 below.

18 2.2 "Reformulated Product" shall mean Product that contains less than or equal to
19 1,000 parts per million ("ppm") of each of DINP and DEHP when analyzed pursuant to U.S.
20 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology
21 utilized by federal or state government agencies for the purpose of determining DEHP and/or
22 DINP content in a solid substance.

23 2.3 Commencing on the Effective Date, T. Christy shall, for all Product it sells or
24 distributes and which is intended for sale in California that is not a Reformulated Product, or
25 which T. Christy has reason to believe will be shipped or sold in California, provide clear and
26 reasonable warnings as set forth in subsections 2.3(a) and (b) below. The warning shall be
27 prominently placed with such conspicuousness as compared with other words, statements,
28 designs, or devices as to render it likely to be read and understood by an ordinary individual

1 under customary conditions before purchase or use. Each warning shall be provided in a manner
2 such that the consumer or user is reasonably likely to understand to which specific Product the
3 warning applies, so as to minimize the risk of consumer confusion.

4 In the event that the Office of Environmental Health Hazard Assessment promulgates one
5 or more regulations requiring or permitting warning text and/or methods of transmission different
6 than those set forth above, T. Christy shall be entitled to use, at its discretion, such other warning
7 text and/or method of transmission without being deemed in breach of this Agreement.

8 (a) **Retail Store Sales**

9 (i) **Product Labeling.** T. Christy shall affix a warning to the
10 packaging, labeling or directly on each Product in California by T. Christy that
11 states:

12 **[PROPOSITION 65] WARNING:**

13 This product contains chemicals known to the State of California to cause cancer
and birth defects or other reproductive harm.

14 The bracketed text may, but is not required to, be used.

15 (ii) **Point of Sale Warnings.** Alternatively, T. Christy may
16 provide warning signs in the form below to its customers in California with
17 instructions to post the warnings in close proximity to the point of display
18 of the Product. Such instruction sent to T. Christy customers shall be sent
19 by certified mail, return receipt requested.
20

21 **[PROPOSITION 65] WARNING:**

22 This product contains chemicals known to the State of California to cause cancer
and birth defects or other reproductive harm.

23 The bracketed text may, but is not required to, be used.

24 (b) **Mail Order Catalog Warning.** In the event that T. Christy sells
25 Product via mail order catalog directly to consumers located in California after the Effective Date
26 that is not a Reformulated Product, T. Christy either shall provide a warning pursuant to Section
27 2(a)(i) above or shall provide a warning for such Product in the mail order catalog to such
28 California residents. A warning that is given in a mail order catalog shall be in the same type size

1 or larger than the Product description text within the catalog. The following warning shall be
2 provided on the same page and in the same location as the display and/or description of the
3 Product:

4 **[PROPOSITION 65] WARNING:**
5 This product contains chemicals known to the State of California to cause cancer
and birth defects or other reproductive harm.

6 The bracketed text may, but is not required to, be used. Where it is impracticable to provide the
7 warning on the same page and in the same location as the display and/or description of the
8 Product, T. Christy may utilize a designated symbol to cross reference the applicable warning and
9 shall define the term "designated symbol" with the following language on the inside of the front
10 cover of the catalog or on the same page as any order form for the Product:
11

12 **[PROPOSITION 65] WARNING:** Certain products identified with this symbol
13 ▼ and offered for sale in this catalog contain chemicals known to the State of
California to cause cancer and birth defects or other reproductive harm.

14 The bracketed text may, but is not required to, be used. The designated symbol must
15 appear on the same page and in close proximity to the display and/or description of the Product.
16 On each page where the designated symbol appears, T. Christy must provide a header or footer
17 directing the consumer to the warning language and definition of the designated symbol.

18 **(c) Internet Sales Warning.** In the event that T. Christy sells
19 Product via the internet directly to consumers located in California after the Effective Date that is
20 not a Reformulated Product, T. Christy either shall provide a warning pursuant to Section 2(a)(i)
21 above or shall provide a warning for such Product sold via the internet to such California
22 residents. A warning that is given on the internet shall be in the same type size or larger than the
23 Product description text and shall be given in conjunction with the direct sale of the Product. The
24 warning shall appear either: (a) on the same web page on which the Product is displayed; (b) on
25 the same web page as the order form for the Product; (c) on the same page as the price for the
26 Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.
27 The following warning shall be provided:
28

1 **[PROPOSITION 65] WARNING:**

2 This product contains chemicals known to the State of California to cause cancer and birth
3 defects or other reproductive harm.

4 The bracketed language may, but is not required to, be used.

5 2.4 The warning requirements set forth in Section 2.3 shall not apply to any
6 Reformulated Product.

7 3. Entry of Consent Judgment

8 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
9 Upon entry of this Consent Judgment, Espinosa and T. Christy waive their respective rights to a
10 hearing or trial on the allegations of the Espinosa Complaint and 60-Day Notice.

11 3.2 In the event that the Attorney General objects or otherwise comments on one or
12 more provisions of this Consent Judgment, Espinosa and T. Christy agree to take reasonable steps
13 to satisfy such concerns or objections.

14 4. Matters Covered By This Consent Judgment

15 4.1 This Consent Judgment is a full, final and binding resolution between Plaintiff
16 Espinosa, acting on his own behalf, and on behalf of the public and in the public interest, and
17 Defendant T. Christy, its parents, subsidiaries, affiliated entities under common ownership,
18 directors, officers, agents employees, attorneys, and each entity to whom T. Christy directly or
19 indirectly distributes or sells the Product, including, but not limited, to downstream distributors,
20 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively,
21 "Releasees"), and shall have preclusive effect such that no other person or entity, whether
22 purporting to act in his, her, or its interests or the public interest shall be permitted to pursue
23 and/or take any action with respect to: (i) any violation of Proposition 65 that was alleged in the
24 Complaint, or that could have been brought pursuant to the Notice; or (ii) any other statutory or
25 common law claim, to the fullest extent that any of the foregoing described in (i) or (ii) were or
26 could have been asserted by any person or entity against any Releasee based on its exposure of
27 persons to the Product, or its failure to provide a clear and reasonable warning of exposure to
28 such individuals, or (iii) as to alleged exposures to the Product, any other claim based on whole or

1 in part on the facts alleged in the Complaint and the Notice, whether based on actions committed
2 by T. Christy or any other Releasee. As to alleged exposures to the Product, compliance with the
3 terms of this Consent Judgment resolves any issue, now and in the future, and is deemed
4 sufficient to satisfy all obligations concerning, compliance by T. Christy with the requirements of
5 Proposition 65 with respect to the Product, and any alleged resulting exposure.

6 4.2 As to alleged exposures to the Product, Espinosa waives all rights to institute any
7 form of legal action, and releases all claims against Releasees whether under Proposition 65 or
8 otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or in part,
9 the Product, including but not limited to any exposure to, or failure to warn with respect to, the
10 Product (referred to collectively in this Section as the "Claims"). In furtherance of the foregoing,
11 as to alleged exposures to the Product, Espinosa waives any and all rights and benefits which he
12 now has, or in the future may have, conferred upon him with respect to the Claims by virtue of
13 the provisions of § 1542 of the California Civil Code, which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
15 CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT
16 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
17 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
18 DEBTOR.

19 Espinosa understands and acknowledges that the significance and consequence of this waiver of
20 California Civil Code § 1542 is that even if Espinosa suffers future damages arising out of or
21 resulting from, or related directly or indirectly to, in whole or in part, the Product, including but
22 not limited to any exposure to, or failure to warn with respect to exposure to, the Product,
23 Espinosa will not be able to make any claim for those damages against T. Christy or the other
24 Releasees.

25 **5. Enforcement of Judgment**

26 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
27 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
28 Alameda County, giving the notice required by law, enforce the terms and conditions contained

1 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party
2 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation
3 of Proposition 65 or this Consent Judgment.

4 **6. Modification of Judgment**

5 6.1 This Consent Judgment may be modified only by written agreement of the parties
6 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
7 provided by law and upon an entry of a modified Consent Judgment by the Court.

8 6.2 Without limiting the generality of the foregoing, should any court enter final
9 judgment in a case brought by Espinosa or the People involving the Product that sets forth
10 standards defining when Proposition 65 warnings will or will not be required ("Alternative
11 Standards"), or if the California Attorney General's office otherwise provides written
12 endorsement (i.e., a writing that is circulated by the Attorney General that is not intended for the
13 purpose of soliciting further input or comments) of Alternative Standards applicable to the
14 products that are of the same general type and function as the Product and constructed from the
15 same materials, T. Christy shall be entitled to seek a modification of this Consent Judgment on
16 sixty (60) days' notice to Espinosa so as to be able to utilize and rely on such Alternative
17 Standards in lieu of those set forth in Section 2 of this Consent Judgment. Espinosa shall not
18 unreasonably contest any proposed application to effectuate such a modification and reserves its
19 right to dispute whether the Product for which such a modification is sought is of the same
20 general type and function as those to which the Alternative Standards apply.

21 **7. Settlement Payment**

22 7.1 In settlement of all the claims referred to in this Consent Judgment, and without
23 any admission of liability therefor, T. Christy shall make the following monetary payments:

24 7.1.1 T. Christy shall pay a total of \$3,000.00 in civil penalties in accordance
25 with this Section. The civil penalty payment will be allocated in accordance with California
26 Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California
27 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
28 civil penalty remitted to Espinosa.

1 7.1.2 Within seven (7) business days of the Effective Date, T. Christy shall issue
2 two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of
3 \$2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$750.00.

4 Payment owed to Espinosa pursuant to this Section shall be delivered to the following payment
5 address:

6 Evan J. Smith, Esquire
7 Brodsky & Smith, LLC
8 Two Bala Plaza, Suite 510
9 Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 P.O. Box 4010
17 Sacramento, CA 95812-4010

18 For Non-United States Postal Service Delivery:

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

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

26 7.1.3 In addition to the payment above, T. Christy shall pay \$27,000.00 to
27 Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Espinosa's
28 attorneys' fees and costs, including any investigation and laboratory costs or expert fees, incurred
in the course of bringing the Espinosa action, and in enforcing Proposition 65, including without
limitation, preparation of the 60-Day Notice letter and discussions with the office of the Attorney
General. Payment shall be made within seven (7) business days of the Effective Date and sent to
the address for Brodsky & Smith set forth in section 7.1.2, above.

8. Notices

1 8.1 Any and all notices between the parties provided for or permitted under this
2 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class
3 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
4 party by the other party to the following addresses:

5 For T. Christy:

6 Jon Christy
7 T. Christy Enterprises, Inc.
8 655 E. Ball Road
9 Anaheim, CA 92805
10 T: 714.507.3300

11 For Espinosa:

12 Evan J. Smith
13 BRODSKY & SMITH, L.L.C.
14 9595 Wilshire Blvd., Suite 900
15 Beverly Hills, CA 90212
16 T: 877.354.2590

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. Authority to Stipulate**

20 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
21 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
22 the party represented and legally to bind that party.

23 **10. Counterparts**

24 10.1 This Stipulation may be signed in counterparts and shall be binding upon the
25 parties hereto as if all said parties executed the original hereof.

26 **11. Retention of Jurisdiction**

27 11.1 This Court shall retain jurisdiction of this matter to implement the Consent
28 Judgment.

12. Service on the Attorney General

12.1 Espinosa shall serve a copy of this Consent Judgment, signed by both parties, on
the California Attorney General on behalf of the parties as required by law so that the Attorney
General may review this Consent Judgment prior to its submittal to the Court for Approval. No

1 sooner than forty-five (45) days after the Attorney General has received the aforementioned copy
2 of this Consent Judgment, and in the absence of any written objection by the Attorney General to
3 the terms of this Consent Judgment, the parties may then submit it to the Court for Approval.

4 **13. Entire Agreement**

5 13.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the parties with respect to the entire subject matter hereof, and any and all discussions,
7 negotiations, commitment and understandings related thereto. No representations, oral or
8 otherwise, express or implied, other than those contained herein have been made by any party
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
10 to exist or to bind any of the parties.

11 **14. Governing Law and Construction**

12 14.1 The validity, construction and performance of this Consent Judgment shall be
13 governed by the laws of the State of California, without reference to any conflicts of law
14 provisions of California law.

15 **15. Court Approval**

16 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
17 effect, and cannot be used in any proceeding for any purpose.

18 **IT IS SO STIPULATED:**

19
20 Dated: _____ Dated: 1-20-16
21
22 By: _____ By: [Signature]
23 Gabriel Espinosa T. Christy Enterprises
24 Son Christy

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

26
27 Dated: _____ Judge of Superior Court
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Dated: 1/12/16

Dated: _____

By: 
Gabriel Espinoza

By: _____
T. Christy Enterprises

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 4/4/2016


Judge of Superior Court