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Attorneys for Plaintiff

FILED
ALAMEDA COUNTY

SEP 25 2017

CLERK OF THE SUPERIOR COURT
By Kate Clarke Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

KAREN CALACIN,

Plaintiff,

v.

ARTISTIC PRODUCTS, LLC,

Defendant.

Case No.: RG17860577
CONSENT JUDGMENT
Judge: Stephen Pulido
Dept.: 517
Hearing Date: September 12, 2017
Hearing Time: 3:00 PM
Reservation #: R-1867193

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Karen Calacin acting on behalf of the public interest (hereinafter “Calacin”) and Artistic Products, LLC (“Artistic Products” or “Defendant”) with Calacin and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Calacin is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Artistic Products is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Calacin alleges that Defendant has exposed individuals to Diisononyl phthalate (DINP) from Krystal View Clear Desk Pads without providing clear and reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 **Notices of Violation/Complaint.** On or about December 21, 2016, Calacin served Artistic Products and various public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in violation of Proposition 65 for failing to warn consumers and customers that Krystal View Clear Desk Pads exposed users in California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On May 16, 2017, Calacin filed a complaint in the matter (the “Complaint”).

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

1.5 Defendant denies the material allegations contained in Calacin’s Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment

1 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
2 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
3 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
4 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
5 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7 **2.1 Covered Products.** The term "Covered Products" means Artistic Products' desk
8 pads, including but not limited to the Krystal View Clear Desk Pads, SKU No. 0 30615 62009 6,
9 and the Microban Executive Desk Pad, SKU No. 030615 13841 6, that are manufactured,
10 distributed and/or offered for sale in California by Artistic Products and that contain DINP.

11 **2.2 Effective Date.** The term "Effective Date" means the date this Consent Judgment is
12 entered as a Judgment of the Court.

13 **3. INJUNCTIVE RELIEF: WARNINGS**

14 **3.1** Commencing ninety (90) days after the Effective Date, Artistic Products shall not
15 manufacture, import, or purchase for sale in California any Covered Product that contains more
16 than 1,000 parts per million DINP, unless the Covered Product is accompanied by the following
17 warning: "WARNING: This product contains a chemical known to the State of California to cause
18 cancer, birth defects and other reproductive harm."

19 **3.2** The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
20 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
21 on the packaging or labeling and displayed with such conspicuousness, as compared with other
22 words, statements, or designs as to render it likely to be read and understood by an ordinary
23 individual under customary conditions of purchase or use. A warning may be contained in the same
24 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
25 concerning the use of the product and shall be at least the same size as those other safety warnings.
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1 **4. MONETARY TERMS**

2 **4.1 Initial Civil Penalty.** Artistic Products shall pay an Initial Civil Penalty of
3 \$5,500.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance
4 with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
5 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the
6 penalty remitted to Calacin, as provided by California Health & Safety Code § 25249.12(d).

7 4.1.1 Within ten (10) business days of the Effective Date, Artistic Products shall
8 issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of
9 \$4,125.00; and (b) "Brodsky & Smith, LLC in Trust for Calacin" in the amount of \$1,375.00.
10 Payment owed to Calacin pursuant to this Section shall be delivered to the following payment
11 address:

12 Evan J. Smith, Esquire
13 Brodsky & Smith, LLC
14 Two Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
 P.O. Box 4010
 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

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

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

1 **4.2 Final Civil Penalty.** Two hundred twenty (220) days after the Effective Date,
2 Artistic Products shall make a Final Civil Penalty payment of \$5,500.00 on the same terms as set
3 forth in Section 4.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code
4 of Regulations, Section 3203(c), Calcin agrees that the Final Civil Penalty payment shall be waived
5 in its entirety if, on or before the Final Civil Penalty payment is due, an officer of Artistic Products
6 provides Plaintiff with a signed declaration certifying that all Covered Products it ships for sale or
7 distributes for sale in California as of the date of its certification are Reformulated Products or are
8 marked with the warnings required by this Consent Decree (hereinafter "Labeled Product") and
9 that Artistic Products will continue to offer only Reformulated Products or Labeled Products in
10 California in the future. The option to provide a declaration certifying its complete early
11 reformulation or labeling of the Covered Products in lieu of making the Final Civil Penalty payment
12 otherwise required by this Section is a material term, and time is of the essence.

13 **4.3 Attorney Fees.** Artistic Products shall pay \$42,000.00 to Brodsky & Smith, LLC
14 ("Brodsky Smith") as complete reimbursement for Plaintiff Calacin's attorneys' fees and costs
15 incurred as a result of investigating, bringing this matter to Artistic Products' attention, litigating
16 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
17 Code of Civil Procedure section 1021.5. The timing specified for payment required by this Section
18 is a material term, and time is of the essence:

19 **4.3.1** Within ten (10) business days of the Effective Date, Artistic Products shall
20 issue a check for Attorney Fees addressed to "Brodsky & Smith, LLC" for \$22,000.00 delivered to
21 the address listed in Section 4.1.1 above.

22 **4.3.2** Within sixty (60) calendar days of the Effective Date, Artistic Products shall
23 issue a second check for Attorney Fees addressed to "Brodsky & Smith, LLC" for \$20,000.00
24 delivered to the address listed in Section 4.1.1 above.

25 **4.4** Artistic Products shall be liable for reimbursement of additional attorney fees
26 ("Additional Fees") equal to \$2,500.00, for all amounts due and owing that are not received within
27 five (5) calendar days of the date they are due.
28

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This consent judgment is a full, final, and binding resolution between Calacin acting
3 in the public interest, and Artistic Products, and its parents, shareholders, divisions, subdivisions,
4 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns ("Defendant
5 Releasees"), and all entities from whom they obtain and to whom they directly or indirectly
6 distribute or sell Covered Products, including but not limited to Staples, Inc. ("Staples"),
7 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
8 franchisees, and cooperative members ("Downstream Defendant Releasees"), of all claims for
9 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
10 Notice, with respect to any Covered Products manufactured, distributed, or sold by Artistic
11 Products prior to ninety (90) days after the Effective Date. Compliance with the terms of this
12 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

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

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27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY

1 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
2 THE DEBTOR.

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

8 **6. INTEGRATION**

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

13 **7. GOVERNING LAW**

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

19 **8. NOTICES**

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

24 For Defendant:

25 Bradley Brighton
26 Artistic Products, LLC
27 125 Commerce Drive
28 Hauppauge, NY 11788

And

1 For Calacin:

2 Evan Smith
3 Brodsky & Smith, LLC
4 2 Bala Plaza, Suite 510
5 Bala Cynwyd, PA 19004

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
19 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
20 30 days, the case shall proceed on its normal course.

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

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
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1 **12. ATTORNEY'S FEES**

2 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
4 the unsuccessful party has acted with substantial justification. For purposes of this Consent
5 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
6 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

7 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
8 pursuant to law.

9 **13. RETENTION OF JURISDICTION**

10 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
11 Consent Judgment.

12 **14. AUTHORIZATION**

13 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood and agree to all of the terms and conditions of this
15 document and certifies that he or she is fully authorized by the Party he or she represents to execute
16 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
17 explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO:

AGREED TO:

Date: 6-26-17


Date: 6/25/17

By: 
KAREN CALACIN

By: Bradley Brighton Pres.
ARTISTIC PRODUCTS, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 9-25-2017



Judge of Superior Court
Stephen Pulido