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Attorney for Defendant Custom Accessories, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

GABRIEL ESPINOSA,
Plaintiff,
v.
CUSTOM ACCESSORIES, INC.,
Defendant.

FILED
ALAMEDA COUNTY

MAY 31 2018

CLERK OF THE SUPERIOR COURT

By _____ Deputy

Case No.: RG18891161

CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: May 31, 2018

Hearing Time: 3:45 PM

Reservation #: R-1951201

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinosa acting on behalf of the public interest (hereinafter “Espinosa”) and Custom Accessories,
4 Inc. (“Custom Accessories” or “Defendant”) with Espinosa and Defendant collectively referred to
5 as the “Parties” and each of them as a “Party.” Espinosa 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.** Espinosa alleges that Defendant has exposed
11 individuals to Diisononyl phthalate (DINP) from Custom steering wheel covers without providing
12 clear and reasonable exposure warnings under Proposition 65. DINP is listed under Proposition 65
13 as a chemical known to the State of California to cause cancer.

14 1.3 **Notices of Violation/Complaint.** On or about February 2, 2017, Espinosa served
15 Custom Accessories, and various public enforcement agencies with a document entitled “60-Day
16 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that
17 Defendant was in violation of Proposition 65 for failing to warn consumers and customers that
18 Custom steering wheel covers exposed users in California to DINP. No public enforcer has brought
19 and is diligently prosecuting the claims alleged in the Notice. On January 30, 2018, Espinosa filed
20 a complaint (the “Complaint”) in the matter.

21 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
23 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
24 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
25 claims which were or could have been raised in the Complaint based on the facts alleged therein
26 and/or in the Notice.

1 1.5 Defendant denies the material allegations contained in Espinosa'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 Custom steering wheel
10 covers that have been manufactured, distributed and/or offered for sale in California by Custom
11 Accessories, and that contain DINP.

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 As of the date this Consent Judgment is signed by both Parties, Custom Accessories
16 shall not manufacture or order from any supplier any Covered Products intended for retail sale in
17 California that contains DINP on any component to which consumers are exposed in excess of
18 0.1% (1,000 ppm) (hereinafter "Reformulated Products") unless the Covered Product is
19 accompanied by a warning that complies with Article 6 of Title 27 of the California Code of
20 Regulations. Custom Accessories shall have a period of one year from the date this Consent
21 Judgment is signed by both Parties to sell through its inventory of Covered Products that were
22 ordered prior to the date this Consent Judgment is signed. Until August 30, 2018, the warning shall
23 consist of either:

24 (a) The statement: "WARNING: This product may contain a chemical known to the
25 State of California to cause cancer, birth defects, or other reproductive harm"; or

26 (b) The statement: "WARNING: This product may contain a chemical known to the
27 State of California to cause cancer"; or
28

1 (c) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle
2 with a bold black outline to the left of the word "warning" in bold all capital letters, followed
3 by the statement "This product can expose you to chemicals including Diisononyl phthalate
4 (DINP), which is known to the State of California to cause cancer. For more information,
5 go to www.P65Warnings.ca.gov;" or (2) a warning on the Products consisting of a symbol
6 that is a black exclamation point in a yellow equilateral triangle with a bold black outline to
7 the left of the word "warning" in bold all capital letters, followed by the statement "Cancer
8 and Reproductive Harm - www.P65Warnings.ca.gov."¹

9 On and after August 30, 2018, the warning set forth in Section 3.1(c) shall be used.

10 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
11 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
12 automatic process, providing that the warning is displayed with such conspicuousness, as compared
13 with other words, statements, or designs as to render it likely to be read and understood by an
14 ordinary individual under customary conditions of purchase or use. A warning may be contained
15 in the same section of the packaging, labeling, or instruction booklet that states other safety
16 warnings, if any, concerning the use of the product and shall be at least the same size as those other
17 safety warnings. If subsequently enacted changes to Proposition 65 or its implementing regulations
18 require the use of additional or different information on any warning, the Parties agree that the new
19 safe harbor warning may be utilized in place of the warning set forth in this Section.

20 4. MONETARY TERMS

21 4.1 **Civil Penalty.** Custom Accessories shall pay a Civil Penalty of \$500.00 pursuant to
22 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
23 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
24 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
25 Espinosa, as provided by California Health & Safety Code § 25249.12(d).

26 ¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other
27 transmission format is being printed with yellow color for purposes of other language, symbols or
28 designs.

1 4.1.1 Within fourteen (14) days of the Effective Date, Custom Accessories shall
2 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
3 \$375.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$125.00.
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

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

11 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

21 4.2 **Attorney Fees.** Within fourteen (14) days of the Effective Date, Custom
22 Accessories shall pay \$14,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete
23 reimbursement for Plaintiff Espinosa's attorneys' fees and costs incurred as a result of
24 investigating, bringing this matter to Custom Accessories' attention, litigating and negotiating and
25 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
26 Procedure section 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa
3 acting on his own behalf, and on behalf of the public interest, and Custom Accessories, and its
4 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
7 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
8 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
9 retailers, franchisees, and cooperative members (“Downstream Releasees”), of all claims for
10 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
11 Notice, with respect to any Covered Products manufactured, distributed, or sold by Custom
12 Accessories prior to the Effective Date. This Consent Judgment shall have preclusive effect such
13 that no other person or entity, whether purporting to act in his, her, or its interests or the public
14 interest shall be permitted to pursue and/or take any action with respect to any violation of
15 Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the
16 Notice against Custom Accessories or its Downstream Releasees of the Product including but not
17 limited to (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment
18 constitutes compliance with Proposition 65 with regard to the Covered Products.

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

5
6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
8 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
9 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
10 THE DEBTOR.

11 5.3 Custom Accessories waives any and all claims against Espinosa, his attorneys and
12 other representatives, for any and all actions taken or statements made (or those that could have
13 been taken or made) by Espinosa and his attorneys and other representatives, whether in the course
14 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and/or with respect to Covered Products.

16 **6. INTEGRATION**

17 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
18 any and all prior negotiations and understandings related hereto shall be deemed to have been
19 merged within it. No representations or terms of agreement other than those contained herein exist
20 or have been made by any Party with respect to the other Party or the subject matter hereof.

21 **7. GOVERNING LAW**

22 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed or
24 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
25 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
26 to the extent that, Covered Products are so affected.

27 **8. NOTICES**

28 8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-

1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
2 by the other party at the following addresses:

3 For Defendant:

4 Joshua Simon
5 Call & Jensen
6 610 Newport Centre Drive, Ste. 700
Newport Beach, CA 92660

7 And

8 For Espinosa:

9 Evan Smith
10 Brodsky & Smith, LLC
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

13 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

14 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
15 which shall be deemed an original, and all of which, when taken together, shall constitute one and
16 the same document.

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

19 10.1 Espinosa agrees to comply with the requirements set forth in California Health &
20 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
21 Defendant agrees it shall support approval of such Motion.

22 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
23 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
24 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
25 30 days, the case shall proceed on its normal course.

26 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
27 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
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1 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
2 its normal course on the trial court's calendar.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

7 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

9 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
10 pursuant to law.

11 **13. RETENTION OF JURISDICTION**

12 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 **14. AUTHORIZATION**

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

20 **AGREED TO:**

AGREED TO:

21
22 Date: 4/8/18

Date: _____

23 By: GABRIEL ESPINOSA

By: _____

GABRIEL ESPINOSA

CUSTOM ACCESSORIES, INC.

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

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AGREED TO:

AGREED TO:

Date: _____

Date: April 2, 2018

By: _____

By: Edward M. [Signature]

GABRIEL ESPINOSA

CUSTOM ACCESSORIES, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

May 31, 2018

Frank [Signature]
Judge of the Superior Court