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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By: *[Signature]* Deputy

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Evan Smith (Bar No. SBN 242352)
 BRODSKY & SMITH, LLC.
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Attorneys for Plaintiff
 Gabriel Espinosa

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

GABRIEL ESPINOSA,

Plaintiff,

v.

THE ASHLEY COLLECTION, INC.,

Defendant.

Case No.: RG17885027

CONSENT JUDGMENT

Judge: Frank Roesch

Dept.: 24

Hearing Date: April 26, 2018

Hearing Time: 3:45 PM

Reservation #: R-1939882

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 The Ashley Collection,
4 Inc., (hereinafter "Ashley"), with Espinosa and Ashley collectively referred to as the "Parties" and
5 each of them as a "Party." Espinosa is an individual residing in California who 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. Espinosa alleges that Ashley is a person in
8 the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6
9 et seq.

10 **1.2 Allegations and Representations.** Espinosa alleges that Ashley has exposed
11 individuals to di-n-butyl phthalate ("DBP") from cable locks without providing clear and
12 reasonable warnings under Proposition 65. DBP is listed under Proposition 65 as a chemical known
13 to the State of California to cause reproductive toxicity.

14 **1.3 Notices of Violation/Complaint.** On or about May 19, 2017, Espinosa served
15 Ashley and various public enforcement agencies with a document entitled "60-Day Notice of
16 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Ashley was
17 in violation of Proposition 65 for failing to warn consumers and customers that the cable locks
18 exposed users in California to DBP. No public enforcer has brought and is diligently prosecuting
19 the claims alleged in the Notice. On December 6, 2017, Espinosa filed a complaint in the matter
20 as captioned above ("Complaint").

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Ashley 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.
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1.5 Ashley denies the material allegations contained in Espinosa's Notice and
Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
shall be construed as an admission by Ashley of any fact, finding, issue of law, or violation of law;
nor shall compliance with this Consent Judgment constitute or be construed as an admission by
Ashley of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
denied by Ashley. However, this section shall not diminish or otherwise affect the obligations,
responsibilities, and duties of Ashley under this Consent Judgment.

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2. **DEFINITIONS**

2.1 **Covered Products.** The term "Covered Products" means cable locks that have been
distributed, sold and/or offered for sale in California by Ashley, and that contain DBP.

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

3. **INJUNCTIVE RELIEF: WARNINGS**

3.1 Commencing ninety (90) days after the Effective Date, Ashley shall not
manufacture or purchase for sale in California any Covered Product that contains more than 1,000
parts per million DBP (hereafter, a "Reformulated Product"), unless the Covered Product is
accompanied by either of the following warning(s), or any other warning message that complies
with 27 Cal. Code Regs. § 25603 (effective August 30, 2018):

"WARNING: This product contains a chemical known to the State of California to cause
birth defects and other reproductive harm."

Or

"WARNING: This product can expose you to chemicals including di-n-butyl phthalate
(DBP), which is known to the State of California to cause birth defects or other reproductive
harm. For more information go to www.P65Warnings.ca.gov."

3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
on the packaging, labeling, or instruction booklet and displayed with such conspicuousness, as

1 compared with other words, statements, or designs as to render it likely to be read and understood
2 by an ordinary individual under customary conditions of purchase or use.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Ashley shall pay a Civil Penalty of \$2,000.00 pursuant to Health and
5 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
6 Code § 25192, with 75% of these funds remitted to the State of California's Office of
7 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
8 Espinosa, as provided by California Health & Safety Code § 25249.12(d).

9 4.1.1 Within ten (10) business days of the Effective Date, Ashley shall issue two
10 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
11 (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$500.00. Payment owed to
12 Espinosa pursuant to this Section shall be delivered to the following payment address:

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

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

18 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
25 1001 I Street
Sacramento, CA 95814

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

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1 4.2 **Attorney Fees.** Ashley shall pay \$23,000.00 to Brodsky & Smith, LLC ("Brodsky
2 Smith") as complete reimbursement for Plaintiff Espinosa's attorneys' fees and costs incurred as a
3 result of investigating, bringing this matter to Ashley's attention, litigating and negotiating and
4 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
5 Procedure section 1021.5. Payment shall be made within ten (10) business days of the Effective
6 Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

7 **5. RELEASE OF ALL CLAIMS**

8 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa
9 acting in the public interest, and Ashley and its parents, shareholders, divisions, subdivisions,
10 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns ("Defendant
11 Releasees"), and all entities from whom they obtain and to whom they directly or indirectly
12 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
13 distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative
14 members ("Downstream Defendant Releasees"), of all claims for violations of Proposition 65 based
15 on exposure to DBP from Covered Products as set forth in the Notice, with respect to any Covered
16 Products manufactured, distributed, or sold by Ashley prior to the Effective Date. Compliance with
17 the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the
18 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 any Ashley, Defendant Releasees, and Downstream Defendant 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 Ashley or Defendant Releasees. With
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1 respect to the foregoing waivers and releases in this paragraph, Espinosa hereby specifically waives
2 any and all rights and benefits which he now has, or in the future may have, conferred by virtue of
3 the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

9 5.3 Ashley waives any and all claims against Espinosa, his attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Espinosa and his attorneys and other representatives, whether in the course of
12 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
13 and/or with respect to Covered Products.

14 6. INTEGRATION

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
16 any and all prior negotiations and understandings related hereto shall be deemed to have been
17 merged within it. No representations or terms of agreement other than those contained herein exist
18 or have been made by any Party with respect to the other Party or the subject matter hereof.

19 7. GOVERNING LAW

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed or
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
23 Ashley shall have no further obligations pursuant to this Consent Judgment with respect to, and to
24 the extent that, Covered Products are so affected.

25 8. NOTICES

26 8.1 Unless specified herein, all correspondence and notices required to be provided
27 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
28 class, (registered or certified mail) return receipt requested; (ii) overnight courier; or (iii) electronic
mail on any party by the other party at the following addresses:

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For Ashley:

Robert Goldy
Ashley Collection
250 W. 57th Street, Suite 1120
New York, NY 10107
rgoldy@protocolny.com

With a copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower St.
Forty First Floor
Los Angeles, CA 90071
jeff.margulies@nortonrosefulbright.com

And

For Espinosa:

Evan Smith
Brodsky & Smith, LLC
2 Bala Plaza, Suite 510
Bala Cynwyd, PA 19004
esmith@brodskysmith.com

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

9. COUNTERPARTS, FACSIMILE SIGNATURES

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

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

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

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
3 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
4 30-days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
15 the unsuccessful party has acted with substantial justification. For purposes of this Consent
16 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
17 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

18 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
19 pursuant to law.

20 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 **14. AUTHORIZATION**

24 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
25 respective Parties and have read, understood and agree to all of the terms and conditions of this
26 document and certifies that he or she is fully authorized by the Party he or she represents to execute
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the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 2/26/19
By: [Signature]
GABRIEL ESPINOSA

Date: 1-20-2018
By: [Signature]
ASHLEY COLLECTION, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 4/27/2018

[Signature]
Judge of Superior Court