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Attorneys for Plaintiff

FILED
ALAMEDA COUNTY
JUL 31 2018
CLERK OF THE SUPERIOR COURT
By *David L. Delaney*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

GABRIEL ESPINOSA,

Plaintiff,

v.

BASS PRO, LLC,

Defendant.

Case No.: RG18890390
CONSENT JUDGMENT
Judge: Julia Spain
Dept.: 520
Hearing Date: May 16, 2018
Hearing Time: 2:30
Reservation #: R-1946328

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 Bass Pro, LLC (“Bass
4 Pro” or “Defendant”) with Espinosa and Defendant 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. Bass Pro is a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Espinosa alleges that Defendant has exposed
10 individuals to Diisononyl phthalate (DINP) from Fairkeep Redhead Mouth Call Cases without
11 providing clear and reasonable warnings under Proposition 65. DINP is listed under Proposition
12 65 as a chemical known to the State of California to cause cancer.

13 1.3 **Notice of Violation/Complaint.** On or about August 2, 2017, Espinosa served Bass
14 Pro, and various public enforcement agencies, with a document entitled “60-Day Notice of
15 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
16 was in violation of Proposition 65 for failing to warn consumers and customers that Fairkeep
17 Redhead Mouth Call Cases exposed users in California to DINP. No public enforcer has brought
18 and is diligently prosecuting the claims alleged in the Notice. On January 24, 2018, Espinosa filed
19 a complaint (the “Complaint”) in the matter.

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
22 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
23 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
24 claims which were or could have been raised in the Complaint based on the facts alleged therein
25 and/or in the Notice.

26 1.5 Defendant denies the material allegations contained in Espinosa’s Notice and
27 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
28 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of

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

5 **2. DEFINITIONS**

6 2.1 **Covered Products.** The term “Covered Products” means Fairkeep Redhead Mouth
7 Call Cases that are manufactured, distributed, sold and/or offered for sale in California by Bass Pro.

8 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
9 entered as a Judgment of the Court.

10 **3. INJUNCTIVE RELIEF: WARNINGS**

11 3.1 Commencing within ninety (90) days after the Effective Date, Bass Pro shall not
12 manufacture, import, or purchase for sale in California any Covered Products with any accessible
13 component that contains DINP in excess of 0.1% (1,000 ppm) (hereinafter “Reformulated
14 Products”) unless the Covered Product is accompanied by the following warning: “WARNING:
15 This product contains a chemical known to the State of California to cause cancer.” In lieu of the
16 preceding warning, Bass Pro may use any warning language that complies with Title 27, California
17 Code of Regulations, section 25600 *et seq.*, as amended August 30, 2016. Bass Pro may rely upon
18 its suppliers’ test results in order to determine whether the products are Reformulated Products.

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 displayed with such
21 conspicuousness, as compared with other words, statements, or designs, as to render it likely to be
22 read and understood by an ordinary individual under customary conditions of purchase or use. The
23 warning may be contained in the same section of the packaging, labeling, or instruction booklet
24 that states other safety warnings, if any, concerning the use of the product and shall be at least the
25 same size as those other safety warnings.

26 3.3 Any Covered Products that have been distributed, shipped or sold by Bass Pro prior
27 to the Effective Date, shall not be subject to the requirements of Section 3.1.
28

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Bass Pro shall pay a Civil Penalty of \$1,000.00 pursuant to California
3 Health and Safety Code § 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
5 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
6 Espinosa, as provided by California Health & Safety Code § 25249.12(d).

7 **4.1.1** Within fourteen (14) business days of the Effective Date, Bass Pro shall
8 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
9 \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$250.00.

10 Payment owed to Espinosa 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.

27 **4.2 Conditional Civil Penalty.** One Hundred Eighty (180) days after the Effective
28 Date, Bass Pro shall make a Conditional Civil Penalty payment of \$1,000.00 on the same terms as

1 set forth in Section 4.1.1 pertaining to the Civil Penalty. Pursuant to Title 11 California Code of
2 Regulations, Section 3203(c), Espinosa agrees that the Conditional Civil Penalty payment shall be
3 waived in its entirety if, on or before the date the Conditional Civil Penalty payment is due, an
4 officer of Bass Pro provides Espinosa with a signed declaration certifying that all Covered Products
5 it ships for sale or distributes for sale in California as of the date of its certification are Reformulated
6 Products or are marked with the warnings required by this Consent Decree (hereinafter “Labeled
7 Product”) and that Bass Pro will continue to offer only Reformulated Products or Labeled Products
8 in California in the future. The option to provide a declaration certifying its complete early
9 reformulation or labeling of the Covered Products in lieu of making the Conditional Civil Penalty
10 payment otherwise required by this Section is a material term, and time is of the essence.

11 4.3 **Attorney Fees.** Bass Pro shall pay \$16,500.00 to Brodsky & Smith, LLC (“Brodsky
12 Smith”) as complete reimbursement for Plaintiff Espinosa’s attorneys’ fees and costs incurred as a
13 result of investigating, bringing this matter to Bass Pro’s attention, litigating and negotiating and
14 obtaining judicial approval of a settlement in the public interest, pursuant to California Civil
15 Procedure Code § 1021.5. Payment shall be made within fourteen (14) business days of the
16 Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

17 **5. RELEASE OF ALL CLAIMS**

18 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa
19 acting on his own behalf, and on behalf of the public interest, and Bass Pro, and its parents,
20 shareholders, directors, officers, employees, representatives, agents, attorneys, divisions,
21 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
22 successors and assigns (“Defendant Releasees”), and all entities from whom they obtain and to
23 whom they directly or indirectly distribute or sell the Covered Products, including but not limited
24 to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
25 franchisees, and cooperative members, including but not limited to Bass Pro Outdoor World, LLC,
26 American Sportsman Holdings Co., BPS Direct, LLC, Bass Pro Intellectual Property, LLC,
27 Cabela’s Inc., (“Additional Releasees”), of all claims for violations of Proposition 65 based on
28 exposure to DINP from the Covered Products as set forth in the Notice and Complaint, with respect

1 to any Covered Products manufactured, distributed, or sold by Bass Pro prior to the Effective Date
2 or within ninety (90) days after the Effective Date. This Consent Judgment shall have preclusive
3 effect such that no other person or entity, whether purporting to act in his, her, or its interests or the
4 public interest shall be permitted to pursue and/or take any action with respect to any violation of
5 Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the
6 Notice against Bass Pro, Defendant Releasees or Additional Releasees. Compliance with the terms
7 of this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
8 Products.

9 5.2 In addition to the foregoing, Espinosa, on behalf of himself, his past and current
10 agents, representatives, attorneys, successors and/or assignees, and not in his representative
11 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
12 legal action and releases Bass Pro, Defendant Releasees, and Additional Releasees from any and
13 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
14 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
15 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
16 future, with respect to any alleged violations of Proposition 65 related to or arising from the
17 Covered Products manufactured, distributed, or sold by Bass Pro, Defendant Releasees or
18 Additional Releasees. With respect to the foregoing waivers and releases in this Section, Espinosa
19 hereby specifically waives any and all rights and benefits which he now has, or in the future may
20 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
21 provides as follows:

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

25 5.3 Bass Pro waives any and all claims against Espinosa, his attorneys and other
26 representatives, for any and all actions taken or statements made (or those that could have been
27 taken or made) by Espinosa and his attorneys and other representatives in the course of
28

1 investigating the claims in the Notice and Complaint or otherwise seeking enforcement of
2 Proposition 65 against Bass Pro in this matter with respect to the Covered Products.

3 5.4 Espinosa represents and warrants that as of the date of his execution of this Consent
4 Judgment he is not aware of any other Proposition 65 violations by Defendant.

5 **6. INTEGRATION**

6 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
7 any and all prior negotiations and understandings related hereto shall be deemed to have been
8 merged within it. No representations or terms of agreement other than those contained herein exist
9 or have been made by any Party with respect to the other Party or the subject matter hereof.

10 **7. GOVERNING LAW**

11 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
12 California and apply within the State of California. In the event that Proposition 65 is repealed or
13 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
14 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
15 to the extent that, the Covered Products are so affected.

16 **8. NOTICES**

17 8.1 Unless specified herein, all correspondence and notices required to be provided
18 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
19 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
20 by the other party at the following addresses:

21 For Defendant:

22 Mark E. Elliott
23 PILLSBURY WINTHROP SHAW PITTMAN LLP
24 725 S. Figueroa St., Ste. 2800
Los Angeles, CA 90017-5406

25 Rebecca M. Lee
26 PILLSBURY WINTHROP SHAW PITTMAN LLP
27 725 S. Figueroa St., Ste. 2800
Los Angeles, CA 90017-5406

28 Marsha Green
Bass Pro Group, LLC

1 2500 E. Kearney St.
Springfield, MO 65898

2 For Espinosa:

3 Evan Smith
4 BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212

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 Espinosa 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 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 thirty (30) days, the case shall proceed on its normal course.

21 **11. MODIFICATION**

22 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
23 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

24 **12. ATTORNEY'S FEES**

25 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
26 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
27 the unsuccessful party has acted with substantial justification. For purposes of this Consent
28

1 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
2 Discovery Act of 1986, Code of Civil Procedure Section 2016.010, *et seq.*

3 **13. RETENTION OF JURISDICTION**

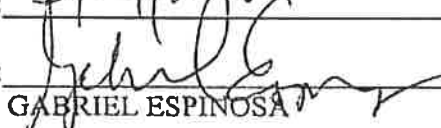
4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

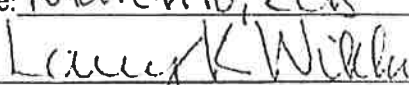
6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties and have read, understood and agree to all of the terms and conditions of this
9 document and certifies that he or she is fully authorized by the Party he or she represents to execute
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
11 explicitly provided herein each Party is to bear its own fees and costs.

12 **AGREED TO:**

AGREED TO:

13
14 Date: 3/29/2018
15 By: 
16 GABRIEL ESPINOSA

Date: March 16, 2018
By: 
BASS PRO, LLC
Group V A T GC

17
18 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

19
20 Dated: 7/24/18


Judge of Superior Court **JULIA A. SPAIN**