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Attorneys for Plaintiff

CLERK OF THE SUPERIOR COURT CLERK OF THE SUPERIOR COURT
By PAM GREENE Deputy Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOSA,

12 Plaintiff,

13 v.

14 NEW IMAGE GROUP, LLC,

15 Defendant.

Case No.: RG18916388

CONSENT JUDGMENT

Judge: Ronni MacLaren

Dept.: 25

Hearing Date: December 4, 2019

Hearing Time: 9:00 AM

Reservation #: R-2123486

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel Espinosa acting on behalf of the public interest (hereinafter “Espinosa”) and New Image Group, Inc. (“New Image” or “Defendant”) with Espinosa and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Espinosa is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. New Image is alleged to be 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.** Espinosa alleges that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Feltables wallets/wristlets without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65.

1.3 **Notice of Violation/Complaint.** On or about April 25, 2018, Espinosa served New Image, and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of Feltables wallets/wristlets expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On August 13, 2018, Espinosa filed a complaint (the “Complaint”) in the matter.

1.3.1 Upon court approval of this Consent Judgment, the Complaint shall be deemed amended to name Espinosa as plaintiff, and New Image Group, Inc. as defendant, and to include claims based on the Notice and 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

1 claims which were or could have been raised in the Complaint based on the facts alleged therein
2 and/or in the Notice.

3 1.5 Defendant denies the allegations contained in Espinosa's Notice and Complaint and
4 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
5 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
6 shall compliance with this Consent Judgment constitute or be construed as an admission by
7 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
8 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
9 responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means Feltables wallets/wristlets
12 of all sizes and colors that are manufactured, distributed and/or offered for sale in California by
13 New Image or any of its affiliates.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: COMPLIANCE WITH WARNING REGULATIONS**

17 3.1 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
18 compliance with this Consent Judgment by complying with warning requirements adopted by the
19 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the
20 Effective Date. There shall be no obligation for Defendant to provide a warning for Covered
21 Products that are already in or enter the stream of commerce prior to the date this Consent Judgment
22 is signed by both Parties.

23 **4. MONETARY TERMS**

24 4.1 **Civil Penalty.** New Image shall pay \$2,000.00 as a Civil Penalty pursuant to Health
25 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
26 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
27 Civil Penalty remitted to Espinosa, as provided by California Health & Safety Code § 25249.12(d).
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1 4.1.1 Within ten (10) days of the Effective Date, New Image shall issue two
2 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and
3 to (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$500.00. Payment owed to
4 Espinosa pursuant to this Section shall be delivered to the following payment address:

5 Evan J. Smith, Esquire
6 Brodsky & Smith, LLC
7 Two Bala Plaza, Suite 510
8 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

17 For Non-United States Postal Service Delivery:

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

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

25 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, New Image shall pay
26 \$18,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
27 Espinosa's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
28 New Image's attention, litigating and negotiating and obtaining judicial approval of a settlement in
the public interest, pursuant to Code of Civil Procedure § 1021.5.

25 5. RELEASE OF ALL CLAIMS

26 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa
27 acting on his own behalf, and on behalf of the public interest, and New Image, and its parents,
28

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

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

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
4 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
6 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
7 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
8 DEBTOR OR RELEASED PARTY.

9 5.3 New Image 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 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
24 to 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; or (ii) overnight courier on any party
by the other party at the following addresses:

For Defendant:

1 Emily L. Wallerstein
2 Squire Patton Boggs (US) LLP
3 555 South Flower Street, 31st Floor
4 Los Angeles, California 90071

4 And

5 For Espinosa:

6 Evan Smith
7 Brodsky & Smith, LLC
8 9595 Wilshire Blvd., Ste. 900
9 Beverly Hills, CA 90212

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

10 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **12. ATTORNEY'S FEES**

5 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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 certify 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.

18 **AGREED TO:**

AGREED TO:

19 Date: October 15, 2019

Date: October 2, 2019

20 By: 
21 GABRIEL ESPINOSA

22 By: 
23 NEW IMAGE GROUP, INC.

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

25 Dated: Dec. 4, 2019

26 
27 Judge of Superior Court