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Attorneys for Plaintiff  
GABRIEL ESPINOSA

FILED  
ALAMEDA COUNTY

DEC 20 2018

CLERK OF THE SUPERIOR COURT  
By *Veneta Way*  
Duty

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

GABRIEL ESPINOSA,  
Plaintiff,

v.

SASHA HANDBAGS, INC.,  
Defendant.

Case No. RG18919825

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.5 et seq., and  
Cal. Code Civ. Proc. § 664.6)

Judge: Frank Roesch  
Dept.: 24  
Date: December 20, 2018  
Time: 3:45 PM  
Reservation #: R-2015459

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered by and between plaintiff Gabriel Espinosa (“Espinosa”),  
4     and defendant Sasha Handbags, Inc. (“Sasha”) with Espinosa and Sasha each individually referred to  
5     as a “Party” and collectively as the “Parties.”

6             **1.2 Plaintiff**

7             Espinosa is an individual residing in California who seeks to promote awareness of exposures  
8     to toxic chemicals and to improve human health by reducing or eliminating hazardous substances  
9     contained in consumer products.

10            **1.3 Defendant**

11            Sasha employs ten or more individuals and is a “person in the course of doing business” for  
12     purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §  
13     25249.6 et seq. (“Proposition 65”).

14            **1.4 General Allegations**

15            Espinosa alleges that Sasha sells and distributes for sale in California without a Proposition 65  
16     warning the following categories of products: (i) shoes, including sandals and flip-flops, containing  
17     di-n-butyl phthalate (“DBP”), and/or lead; (ii) footwear, specifically, plastic flip flops containing  
18     DBP; and (iii) other shoes, sandals (including flip-flops) and footwear containing DBP and/or lead.  
19     DBP, and lead are each listed pursuant to Proposition 65 as a chemical known to cause birth defects  
20     or other reproductive harm. Lead is also listed under Proposition 65 as a chemical that is known to  
21     cause cancer.

22            **1.5 Covered Products**

23            For purposes of this Consent Judgment, “Covered Products” are defined as: (i) shoes,  
24     including sandals and flip-flops, containing DBP and/or lead. These products include, but are not  
25     limited to, Beverly Hills Polo Club Sandals, 1181071, BFLORALBKBK, W37 39/17; (ii) footwear,  
26     specifically, plastic flip flops containing DBP; and (iii) other shoes, sandals (including flip-flops) and  
27     footwear containing DBP and/or lead.

1           **1.6 Notices of Violation**

2           On June 5, 2018, Espinosa served Sasha, the California Attorney General, and all other  
3 requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that  
4 Sasha violated Proposition 65 by failing to warn its customers and consumers in California of the  
5 health risks associated with exposures to DBP and lead from components of Sasha’s products. No  
6 public enforcer has commenced and is diligently prosecuting an action against Sasha to enforce the  
7 violations alleged in the Notice.

8           **1.7 Complaint**

9           On September 7, 2018, Espinosa filed the instant action (“Complaint”), naming Sasha as a  
10 defendant for the alleged violations that are the subject of the Notice.

11           **1.8 No Admission**

12           Sasha denies the material, factual, and legal allegations in the Notice, and maintains that all  
13 the products that it has sold, distributed for sale, or offered for sale in California, including the  
14 Covered Products, comply with all laws. Nothing in this Consent Judgment shall be construed as an  
15 admission by Sasha of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
16 compliance with this Consent Judgment constitute or be construed as an admission by Sasha of any  
17 fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by  
18 Sasha. This Section shall not, however, diminish or otherwise affect Sasha’s obligations,  
19 responsibilities, and duties under this Consent Judgment.

20           **1.9 Jurisdiction**

21           For purposes of this Consent Judgment only, the Parties stipulate that the Court has  
22 jurisdiction over Sasha as to the allegations in the Complaint, that venue is proper in the County of  
23 Los Angeles, and that the Court has jurisdiction to enter and enforce the provisions of this Consent  
24 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

25           **1.10 Effective Date**

26           For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
27 the Motion for Approval of the Consent Judgment is granted by the Court, including any unopposed  
28 tentative ruling granting approval.

1     **2.     INJUNCTIVE RELIEF: REFORMULATION**

2             **2.1     Commitment to Reformulate or Provide Warnings**

3                     **2.1.1**   Commencing on the Effective Date and continuing thereafter, and subject to  
4     Section 2.1.2 below, Sasha agrees to only manufacture for sale, purchase for sale, or distribute for  
5     sale in California Covered Products that are either (a) “Reformulated Products” as defined by  
6     Section 2.2, or (b) that are offered with a clear and reasonable warning that is compliant with  
7     existing obligations of Proposition 65.

8                     **2.1.2**   The requirements in this Section 2 shall not apply to any Covered Product that  
9     as of the Effective Date is in the stream of commerce or is otherwise in Sasha’s inventory stock as of  
10    that date.

11            **2.2     Reformulated Products Defined**

12            For purposes of this Settlement Agreement, Reformulated Products are Covered Products  
13    containing (a) no more than 1,000 parts per million (0.1%) of DBP in any component analyzed  
14    pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and  
15    8270C; (b) no more than 90 parts per million (0.009%) lead content when sampled and analyzed  
16    pursuant to EPA testing methodologies 3050B and 6010B; and (c) yield a result of no more than 1.0  
17    micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to  
18    EPA 6010B. In addition to the above test methodologies, the Parties may use equivalent  
19    methodologies utilized by a state or federal agency to determine DBP and/or lead content in a solid  
20    substance.

21            **2.3     Clear and Reasonable Warnings**

22            Commencing on the Effective Date, subject to Section 2.1.2 above, for all Covered Products  
23    that do not meet the definition of Reformulated Products established by Section 2.2, Sasha shall  
24    provide clear and reasonable warnings in accordance with the existing obligations of Proposition 65,  
25    or title 27 California Code of Regulations § 25600 et seq., as amended from time to time. Sasha  
26    further agrees that any warning used will be prominently placed in relation to a Product with such  
27    conspicuousness when compared with other words, statements, or designs, as to render it likely to be  
28    read and understood by an ordinary individual under customary conditions of purchase or use. A

1 warning may be contained in the same section of the packaging, labeling, or instruction booklet that  
2 states other safety warnings, if any, concerning the use of the product and shall be least the same size  
3 as those other safety warnings. For purposes of this Consent Judgment, a warning displayed or  
4 transmitted according to the above criteria that is affixed directly to a Product or its accompanying  
5 labeling or packaging that contains one of the following statements shall be deemed clear:

6 **⚠ WARNING:** This product can expose you to chemicals, including [DBP] or  
7 [Lead], which is [are] known to the State of California to  
8 cause birth defects or other reproductive harm. For more  
information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)<sup>1</sup>

9 or the following “short-form” warning:

10 **⚠ WARNING:** Cancer and Reproductive Harm -  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)<sup>2</sup>

11 If Sasha sells Covered Products via an internet website to customers located in California, the  
12 warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on  
13 the same web page on which a Product is displayed and/or described; (b) on the same page as the  
14 price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase  
15 during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a  
16 yellow or white equilateral triangle may appear adjacent to or immediately following the display,  
17 description, price, or checkout listing of the Product, if the warning statement appears elsewhere on  
18 the same web page in a manner that clearly associates it with the product(s) to which the warning  
19 applies.

20 The parties acknowledge that Sasha directs its suppliers to assess and select materials that,  
21 among other things, comply with Proposition 65 such that products do not require Proposition 65  
22 warnings, and Sasha thereafter requires the factory(ies) that manufacture Sasha products to purchase  
23 the material from those select suppliers exclusively. In the event Sasha directs such use of the  
24 compliant materials, but the product received is not compliant, Sasha shall not be deemed in violation

25 \_\_\_\_\_  
26 <sup>1</sup> The “long-form” warning must refer to at least one of the chemicals present in the product that exceeds the  
respective concentration level set forth above in Section 2.2.

27 <sup>2</sup> This short-form warning may be used only on a product, product label, or as part of an internet warning, and  
28 must be in a type size no smaller than the largest type size used for consumer information on the product and no case  
smaller than 6-point type. The short-form warning may not be used on a warning sign, e.g., point-of-sale or shelf sign.

1 of the this Consent Judgment; provided that Sasha can demonstrate that it (1) directed the use of the  
2 compliant materials that it had identified, (2) provides notice to the factory requiring that the factory  
3 immediately comply with Sasha's directive, and (3) conducts random testing of finished products to  
4 confirm that the factory is complying with Sasha's instructions. If the product at issue is subsequently  
5 found to again exceed reformulation concentration levels and does not have a compliant Proposition  
6 65 warning associated with it, failure to provide a warning in that event shall be considered a  
7 violation of this Consent Judgment.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payment**

10 Pursuant to Health and Safety Code § 25249.7(b), in settlement of all the claims referred to in  
11 this Consent Judgment, Sasha shall pay \$1,750.00 in civil penalties, all of which will be tendered to  
12 Espinosa's counsel (\$1,312.50 of which is being held in trust for the California Office of  
13 Environmental Health Hazard Assessment ("OEHHA"), and \$437.50 for Espinosa) to hold in trust  
14 until the Court approves the Parties' settlement. Sasha's civil penalty payment shall be allocated  
15 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of  
16 the funds paid to OEHHA, and twenty-five percent (25%) of the funds remitted to Espinosa. Sasha  
17 agrees to deliver its penalty payment owed under this Consent Judgment (\$1,750.00 total) in two  
18 checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,312.50; and  
19 (b) "Gabriel Espinosa, Client Trust Account" in the amount of \$437.50. Espinosa's counsel shall be  
20 responsible for delivering the penalty payment to OEHHA, following the Court's approval and entry  
21 of the settlement and this Consent Judgment.

22 **3.2 Reimbursement of Attorneys' Fees and Costs**

23 The Parties negotiated a reimbursement of the compensation due to Espinosa and his counsel  
24 under general contract principles and the private attorney general doctrine codified at California Code  
25 of Civil Procedure § 1021.5 for all work performed through the mutual execution of this Consent  
26 Judgment. Accordingly, Sasha agrees to pay \$15,750.00 for all fees and costs incurred by Espinosa  
27 investigating, bringing this matter to Sasha's attention, litigating and negotiating a settlement in the  
28 public interest, and obtaining court approval of the same. Sasha agrees that the fee reimbursement

1 will be paid to Espinosa's counsel in a check payable to "Brodsky & Smith, LLC."

2 **3.3 Payments Timing; Remaining Payments Held in Trust**

3 All of the settlement payments due under this Consent Judgment (\$1,750.00 for civil  
4 penalties and \$15,750.00 for attorneys' fees) shall be delivered to Sasha's counsel within fifteen (15)  
5 days of the date that this Consent Judgment is fully executed by the Parties, and held in trust by  
6 Sasha's counsel until the Court grants the motion for approval of this Consent Judgment  
7 contemplated by Section 5. Sasha's counsel shall provide Espinosa's counsel with written  
8 confirmation of its receipt of the settlement funds from Sasha. Thereafter, Sasha's counsel shall  
9 hold the funds in trust until, and disburse the payments to Espinosa's counsel within ten (10)  
10 business days after the Effective Date.

11 **3.4 Payment Address**

12 All payments under this Consent Judgment shall be delivered to:

13 Jordan Schatz  
14 Brodsky & Smith, LLC  
15 Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Espinosa's Public Release of Proposition 65 Claims**

18 Espinosa, acting on his own behalf and in the public interest, releases Sasha and its parents,  
19 divisions, subdivisions, subsidiaries, partners, sister companies, affiliated entities under common  
20 ownership, directors, officers, employees, shareholders, heirs, successors, assigns and attorneys  
21 ("Releasees"), and each entity from whom they obtain and/or to whom they directly or indirectly  
22 distribute or sell the Covered Products including, but not limited to, its suppliers, manufacturers,  
23 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors,  
24 licensees, marketplace hosts, and franchisees ("Defendant Releasees") for any violation arising  
25 under Proposition 65 based on a failure to warn about exposures to DBP and/or lead in Covered  
26 Products manufactured, sold, or distributed for sale by Sasha before the Effective Date, as alleged in  
27 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with  
28 Proposition 65 with respect to the alleged or actual failure to warn about exposures to DBP and/or

1 lead in Covered Products manufactured, sold, or distributed for sale by Sasha after the Effective  
2 Date.

3 Espinosa and his attorney represent and warrant that they are not aware of any and have no  
4 intention to bring additional claims against any of the Releasees or Defendant Releasees related to the  
5 Covered Product for other alleged violations of Proposition 65.

#### 6 **4.2 Espinosa's Individual Release of Claims**

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

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

#### 24 **4.3 Sasha's Release of Espinosa**

25 Sasha, on its own behalf, and on behalf of its past and current agents, representatives,  
26 attorneys, successors, and assignees, hereby waives all claims against Espinosa and his attorneys and  
27 other representatives, for any action taken or statement made by Espinosa and his attorneys and other  
28 representatives, whether while investigating claims, seeking to enforce Proposition 65 against it in  
this matter, or with respect to the Covered Products.



1     **5.     COURT APPROVAL**

2             This Consent Judgment is not effective until it is approved and entered by the Court and shall  
3 be null and void if it is not approved and entered by the Court within one year after it has been fully  
4 executed by the Parties, or by such additional time to which the Parties may agree in writing.

5     **6.     SEVERABILITY**

6             If, after the Court's approval and entry of this Consent Judgment as a judgment, any provision  
7 is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely  
8 affected.

9     **7.     GOVERNING LAW; INTEGRATION AND CONSTRUCTION**

10            **7.1     Governing Law**

11            The terms of this Consent Judgment shall be governed by the laws of the state of California  
12 and apply within the state of California. If Proposition 65 is repealed, preempted, or is otherwise  
13 rendered inapplicable by reason of law generally, or as to the Covered Products, then Sasha may  
14 provide written notice to Espinosa of any asserted change in the law, and shall have no further  
15 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
16 Covered Products are so affected.

17            **7.2     Entire Agreement**

18            This Consent Judgment contains the sole and entire agreement and understanding of the  
19 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all  
20 prior discussions, negotiations, commitments, or understandings related thereto, are deemed merged.  
21 No representations, written, oral or otherwise, express or implied, other than those specifically  
22 referred to in this Consent Judgment have been made by any Party. No other agreement not  
23 specifically contained or referenced in this Consent Judgment, oral or otherwise, shall be deemed to  
24 exist or to bind either Party.

25            **7.3     Construction**

26            The Parties, including their counsel, have participated in the preparation of this Consent  
27 Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This Consent  
28 Judgment was subject to revision and modification of the Parties and has been accepted and approved

1 as to its final form by the Parties and their counsel. Accordingly, any uncertainty or ambiguity  
2 existing in this Consent Judgment shall not be interpreted against either Party as a result of the  
3 manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees  
4 that any statute or rule of construction providing that ambiguities are to be resolved against the  
5 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this  
6 regard, the Parties hereby waive California Civil Code § 1654.

7 **8. NOTICE**

8 Unless specified herein, all correspondence and notice required by this Consent Judgment  
9 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
10 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

11 For Sasha:

12 Erol B. Devli  
13 Sasha Handbags, Inc.  
14 10 West 33<sup>rd</sup> St., Suite 620  
New York, New York, 10001

15 Joshua A. Bloom, Esq.  
16 Meyers Nave Riback Silver & Wilson, PLC  
555 12th Street, Suite 1500  
Oakland, CA 94607

17 For Espinosa:

18 Jordan Schatz  
19 Brodsky & Smith, LLC  
20 Two Bala Plaza, Ste. 510  
Bala Cynwyd, PA 19004

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or portable  
25 document format (PDF) signature, each of which shall be deemed an original, and all of which, when  
26 taken together, shall constitute one and the same document.

1 **10. POST-EXECUTION ACTIVITIES**

2 Espinosa agrees to comply with the reporting form requirements referenced in Health and  
3 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
4 § 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent Judgment,  
5 which Espinosa shall draft and file, and Sasha shall support, including by appearing at the hearing if  
6 so requested.

7 **11. MODIFICATION**

8 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
9 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
10 Party, and the entry of a modified consent judgment by the Court.

11 **12. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent Judgment and have read, understand,  
13 and agree to all the terms and conditions contained herein.

14 **AGREED TO:**

**AGREED TO:**

15  
16 Date: 10/23/18

Date: 10/22/18

17 By: [Signature]

GABRIEL ESPINOSA

By: [Signature]

Erol B. Devli, President  
SASHA HANDBAGS, INC.

19  
20 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

21  
22 Dated: 12/20/2018

[Signature]  
Judge of Superior Court

23  
24 3068404.1