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*Attorneys for Plaintiff*

**FILED**  
**ALAMEDA COUNTY**

AUG 12 2020

CLERK OF THE SUPERIOR COURT  
BY: *Venus L. Wright*  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

GABRIEL ESPINOSA,  
Plaintiff,  
v.  
RITE AID CORPORATION,  
Defendant.

Case No.: RG19027556

**CONSENT JUDGMENT**

Judge: James Reilly  
Dept.: 25  
Hearing Date: August 7, 2020  
Hearing Time: 9:00 AM  
Reservation #: R-2183454

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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 Rite Aid Corporation ("Rite Aid" 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. Rite Aid 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 J&M Home Fashions shower curtains without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about July 31, 2018, Espinosa served Rite Aid, 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 J&M Home Fashions shower curtains can expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On July 18, 2019, Espinosa filed a complaint (the "Complaint") in the matter.

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

1           1.5 Defendant denies the material allegations contained in the Notice and Complaint  
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
4 shall compliance with this Consent Judgment constitute or be construed as an admission by  
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
7 responsibilities, and duties of Defendant under this Consent Judgment.

8           **2. DEFINITIONS**

9           2.1 **Covered Products.** The term "Covered Products" means J&M Home Fashions  
10 shower curtains that are manufactured, distributed and/or offered for sale in California by Rite Aid.

11           2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
12 entered as a Judgment of the Court.

13           **3. INJUNCTIVE RELIEF: WARNINGS**

14           3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is  
15 signed by both Parties, and continuing thereafter, Covered Products that Rite Aid directly imports,  
16 distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant  
17 to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3  
18 and 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a Covered  
19 Product that is in compliance with the standard set forth in § 3.2 below. The warning requirement  
20 set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

21           3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products  
22 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP  
23 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
24 and 8270C or other methodology utilized by federal or state government agencies for the purpose  
25 of determining the phthalate content in a solid substance.

26           3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
27 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
28

1 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant imports, distributes,  
2 sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation  
3 for Defendant to provide a warning for Covered Products that enter the stream of commerce prior  
4 to the date this Consent Judgment is signed by both Parties. The warning shall consist of either the  
5 **Warning or Alternative Warning** described in §§ 3.3(a) or (b), respectively:

6 (a) **Warning.** The "Warning" shall consist of the statement:

7 **⚠ WARNING:** This product can expose you to chemicals including di(2-  
8 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
9 cancer and birth defects or other reproductive harm. For more information go to  
10 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

11 (b) **Alternative Warning:** Rite Aid may, but is not required to, use the alternative short-  
12 form warning as set forth in this § 3.3(b) ("**Alternative Warning**") as follows:

13 **⚠ WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

14 3.4 A **Warning or Alternative Warning** provided pursuant to § 3.3 must print the word  
15 "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning symbol to  
16 the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral  
17 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
18 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
19 than the height of the word "**WARNING:**". The warning shall be affixed to or printed on the  
20 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
21 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
22 with other words, statements, or designs as to render it likely to be read and understood by an  
23 ordinary individual under customary conditions of purchase or use. A warning may be contained  
24 in the same section of the packaging, labeling, or instruction booklet that states other safety  
25 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
26 those other safety warnings.

27 If Rite Aid sells Covered Products via an internet website to customers located in California,  
28 the warning requirements of this section shall be satisfied if the foregoing warning appears either:

(a) on the same web page on which a Covered Product is displayed and/or described; (b) on the

1 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
2 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
3 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
4 immediately following the display, description, price, or checkout listing of the Covered Product,  
5 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
6 it with the product(s) to which the warning applies.

7  
8 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
9 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
10 Judgment or by complying with warning requirements adopted by the State of California's Office  
11 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

#### 12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** Rite Aid shall pay \$1,500.00 as a Civil Penalty pursuant to Health  
14 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
15 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
16 Civil Penalty remitted to Espinosa, as provided by California Health & Safety Code § 25249.12(d).

17 **4.1.1** Within twenty (20) days of the Effective Date, Rite Aid shall issue two  
18 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and  
19 to (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$375.00. Payment owed to  
20 Espinosa pursuant to this Section shall be delivered to the following payment address:

21 Evan J. Smith, Esquire  
22 Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

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

25 For United States Postal Service Delivery:

26 Mike Gyurics  
27 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
28 P.O. Box 4010  
Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 1001 I Street  
6 Sacramento, CA 95814

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

9 4.2 **Attorneys' Fees.** Within twenty (20) days of the Effective Date, Rite Aid shall pay  
10 \$16,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for  
11 Espinosa's attorneys' fees and costs incurred as a result of investigating, bringing this matter to  
12 Rite Aid attention, litigating and negotiating and obtaining judicial approval of a settlement in the  
13 public interest, pursuant to Code of Civil Procedure § 1021.5.

14 **5. RELEASE OF ALL CLAIMS**

15 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa  
16 acting on his own behalf, and on behalf of the public interest, and Rite Aid, and its parents,  
17 shareholders, members, directors, officers, managers, employees, representatives, agents,  
18 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
19 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
20 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
21 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
22 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for  
23 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the  
24 Notice, with respect to any Covered Products manufactured, distributed, or sold by Rite Aid prior  
25 to the Effective Date. This Consent Judgment shall have preclusive effect such that no other person  
26 or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted  
27 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
28 the Complaint, or that could have been brought pursuant to the Notice against Rite Aid and/or the  
Downstream Releasees of the Covered Products ("Proposition 65 Claims"). Compliance with the

1 terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the  
2 Covered Products.

3         5.2 In addition to the foregoing, Espinosa, on behalf of himself, his past and current  
4 agents, representatives, attorneys, and successors and/or assignees, and not in his representative  
5 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
6 legal action and releases Rite Aid, Defendant Releasees, and Downstream Releasees from any and  
7 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,  
8 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of  
9 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the  
10 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered  
11 Products manufactured, distributed, or sold by Rite Aid, Defendant Releasees or Downstream  
12 Releasees. With respect to the foregoing waivers and releases in this paragraph, Espinosa hereby  
13 specifically waives any and all rights and benefits which he now has, or in the future may have,  
14 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as  
15 follows:

16             A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
17 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
18 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
19 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
20 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
21 DEBTOR OR RELEASED PARTY.

22         5.3 Rite Aid waives any and all claims against Espinosa, his attorneys and other  
23 representatives, for any and all actions taken or statements made (or those that could have been  
24 taken or made) by Espinosa and his attorneys and other representatives, whether in the course of  
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
26 and/or with respect to Covered Products.

## 27 6. INTEGRATION

28         6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist  
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California and apply within the State of California. In the event that Proposition 65 is repealed or  
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided  
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
13 by the other party at the following addresses:

14 For Defendant:

15 Elizabeth V. McNulty  
16 Evans Fears & Schuttart LLP  
17 4440 Von Karman Avenue, Suite 250  
Newport Beach, CA 92660

18 And

19 For Espinosa:

20 Evan Smith  
21 Brodsky & Smith, LLC  
22 9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212

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

25 **9. COUNTERPARTS, FACSIMILE SIGNATURES**

26 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
28 the same document.



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

3 10.1 Espinosa agrees to comply with the requirements set forth in California Health &  
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
27 respective Parties and have read, understood and agree to all of the terms and conditions of this  
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document and certify that he or she is fully authorized by the Party he or she represents to execute 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: 2/24/2020  
By: [Signature]  
GABRIEL ESPINOSA

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
RITE AID CORPORATION

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

Dated: 8/12/20

[Signature]  
Judge of Superior Court  
JAMES R. REILLY

1 document and certify that he or she is fully authorized by the Party he or she represents to execute  
2 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
3 explicitly provided herein each Party is to bear its own fees and costs.  
4

5 **AGREED TO:**

**AGREED TO:**

6  
7 Date: \_\_\_\_\_

Date: 3/27/2020

8 By: \_\_\_\_\_

By: Emily H. Gue

GABRIEL ESPINOSA

RITE AID CORPORATION

10  
11 **IT IS SO ORDERED, ADJUDGED AND DECREED:**  
12

13 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court