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FILED
ALAMEDA COUNTY

JUN 03 2020

CLERK OF THE SUPERIOR COURT

By *Kate Clarke*
Deputy

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

10 GABRIEL ESPINOZA,

11 Plaintiff,

12 v.

13 MUJI U.S.A. LIMITED,

14 Defendant.

Case No.: RG20055276

CONSENT JUDGMENT

Judge: Stephen Pulido

Dept.: 517

Hearing Date: May 7, 2020

Hearing Time: 3:00 PM

Reservation #: R-2171510

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Muji U.S.A. Limited
4 (“Muji” or “Defendant”) with Espinoza and Defendant collectively referred to as the “Parties” and
5 each of them as a “Party.” Espinoza represents that he is an individual residing in California that
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in consumer products. Espinoza alleges
8 that Muji is “a person in the course of doing business” for purposes of the Safe Drinking Water
9 and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

10 **1.2 Allegations and Representations.** Espinoza further alleges that Muji distributed
11 for sale in California plastic stationary sets/zip cases containing the chemical di(2-ethylhexyl)
12 phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known
13 to the State to cause cancer, and on October 24, 2003, the State listed DEHP as a chemical known
14 to the State to cause developmental toxicity in males. Espinoza alleges that Muji failed to provide
15 the health hazard warning required by Proposition 65 for exposures to DEHP from sales of the
16 plastic stationary sets/zip cases.

17 **1.3 Notice of Violation/Complaint.** On or about July 30, 2019, Espinoza served Muji
18 and various public enforcement agencies with a document entitled “Notice of Violation of
19 California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Muji and
20 such others, including public enforcers, with notice that alleged that Muji was in violation of
21 California Health & Safety Code § 25249.6, for failing to warn California customers that the
22 plastic stationary sets/zip cases exposed users in California to DEHP. No public enforcer has
23 diligently prosecuted the allegations set forth in the Notice. On February 19, 2020, Espinoza filed
24 a complaint (the “Complaint”) in the matter.

25 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter,
27 that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve,
28 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution

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

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

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means the 5-piece Stationary
12 Sets/Plastic Zip Cases imported, distributed and/or sold in California by Muji.

13 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
14 entered as a Judgment of the Court.

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
17 signed by both Parties, and continuing thereafter, Covered Products that Muji directly
18 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
19 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
20 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
21 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
22 3.2 below. The warning requirements set forth in §§ 3.3 and 3.4 shall not apply to any
23 Reformulated Product.

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

1 **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
2 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
3 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
4 imports, distributes, sells, or offers for sale in California that are not Reformulated Products. There
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the
6 stream of commerce prior to the date this Consent Judgment is signed by both Parties. The
7 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),
8 respectively:

9 (a) **Warning:** Muji may use the following warning ("**Warning**"):

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

13 (b) **Alternative Warning:** Muji may, but is not required to, use an alternative short-
14 form warning ("**Alternative Warning**") as follows:

15 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

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

1 If Muji sells Covered Products via an internet website to customers located in California,
2 the warning requirements of this section shall be satisfied if the **Warning** or **Alternative**
3 **Warning** appears either: (a) on the same web page on which a Covered Product is displayed
4 and/or described; (b) on the same page as the price for the Covered Product; or (c) on one or more
5 web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a
6 symbol consisting of a black exclamation point in a yellow or white equilateral triangle may
7 appear adjacent to or immediately following the display, description, price, or checkout listing of
8 the Covered Product, if the warning statement appears elsewhere on the same web page in a
9 manner that clearly associates it with the product(s) to which the warning applies.

10 3.5. **Compliance with Warning Regulations.** Defendant shall be deemed to be in
11 compliance with providing warnings pursuant to this Consent Judgment by either adhering to §§
12 3.3 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the
13 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the
14 Effective Date.

15 **4. MONETARY TERMS**

16 4.1 **Civil Penalty.** Muji shall pay \$2,500.00 as a Civil Penalty pursuant to Health and
17 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
18 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
19 Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

20 4.1.1 Within twenty (20) days of the Effective Date, Muji shall issue two separate
21 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,875.00; and to (b)
22 "Brodsky & Smith, LLC in Trust for Espinoza" in the amount of \$625.00. Payment owed to
23 Espinoza pursuant to this Section shall be delivered to the following payment address:

24 Evan J. Smith, Esquire
25 Brodsky & Smith, LLC
26 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

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

1 For United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
P.O. Box 4010
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
1001 I Street
11 Sacramento, CA 95814

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

14 4.2 **Attorneys' Fees.** Within twenty (20) days of the Effective Date, Muji shall pay
15 \$23,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
16 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
Muji's attention, litigating, and negotiating and obtaining judicial approval of a settlement in the
public interest, pursuant to Code of Civil Procedure § 1021.5.

17 **5. RELEASE OF ALL CLAIMS**

18 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
19 acting on his own behalf, and on behalf of the public interest, and Muji, and its parents,
20 shareholders, members, directors, officers, managers, employees, representatives, agents,
21 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
22 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
23 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
24 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
25 retailers, franchisees and cooperative members ("Downstream Releasees"), of all claims for
26 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the
27 Notice, with respect to any Covered Products manufactured, distributed, or sold by Muji prior to
28 the Effective Date. This Consent Judgment shall have preclusive effect such that no other person

1 or entity, whether purporting to act in his, her, or its interests or the public interest shall be
2 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
3 alleged in the Complaint, or that could have been brought pursuant to the Notice against Muji,
4 Defendant Releasees, and/or the Downstream Releasees of the Covered Products ("Proposition 65
5 Claims"). Compliance with the terms of this Consent Judgment constitutes compliance with
6 Proposition 65 with regard to the Covered Products.

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

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

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

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

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

12 **8. NOTICES**

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

17 For Defendant:

18 Sarah Bell
19 Farella Braun + Martel LLP
20 Russ Building
21 235 Montgomery Street
22 17th Floor
23 San Francisco, CA 94104

24 And

25 For Espinoza:

26 Evan Smith
27 Brodsky & Smith, LLC
28 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

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.

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
8 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
9 Defendant agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
12 the Parties agree to meet and confer on how to proceed and if such agreement is not reached
13 within 30 days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either
21 Party.

22 **12. ATTORNEYS' FEES**

23 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
24 Judgment shall be required to pay the prevailing party's reasonable attorneys' fees and costs.

25 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
26 pursuant to law.

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to enforce or modify the

Consent Judgment

14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
respective Parties and have read, understood and agree to all of the terms and conditions of this
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:

Date: 2/21/2020

By: 
GABRIEL ESPINOZA


AGREED TO:

Date: March 9, 2020

By: 
NIJI U.S.A. LIMITED

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 6-3-2020


Judge of Superior Court

Stephen Pulido

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