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FILED
ALAMEDA COUNTY

OCT 01 2020

CLERK OF THE SUPERIOR COURT
By *Kelle Clarke*
Deputy

C/C 517

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 GABRIEL ESPINOZA,
12 Plaintiff,

13 v.

14 FASHION DISTRIBUTION CENTER, INC.,
15 Defendant.

Case No.: HG20054596

CONSENT JUDGMENT

Judge: Stephen Pulido
Dept.: 517
Hearing Date: May 14, 2020
Hearing Time: 3:00 PM
Reservation #: R - 2172362

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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 Fashion Distribution
4 Center, Inc. (“FDC” or “Defendant”) with Espinoza and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Espinoza represents that he is an individual residing in
6 California that seeks to promote awareness of exposures to toxic chemicals and improve human
7 health by reducing or eliminating hazardous substances contained in consumer products.
8 Espinoza alleges that FDC is “a person in the course of doing business” for purposes of the Safe
9 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq.
10 (“Proposition 65”).

11 1.2 **Allegations and Representations.** Espinoza alleges that FDC distributed for sale
12 in California La Terra purses/clutches containing the chemical diisononyl phthalate (DINP). On
13 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause
14 cancer. Espinoza alleges that FDC failed to provide the health hazard warning required by
15 Proposition 65 for exposures to DINP from sales of the La Terra purses/clutches.

16 1.3 **Notice of Violation/Complaint.** On or about October 29, 2019, Espinoza served
17 FDC and various public enforcement agencies with a document entitled “Notice of Violation of
18 California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided FDC and
19 such others, including public enforcers, with notice that alleged that FDC was in violation of
20 California Health & Safety Code § 25249.6, for failing to warn California customers that the La
21 Terra purses/clutches exposed users in California to DINP. No public enforcer has diligently
22 prosecuted the allegations set forth in the Notice. On February 14, 2020, Espinoza filed a complaint
23 (the “Complaint”) in the matter.

24 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
26 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
27 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
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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 material allegations contained in Espinoza's Notice and
4 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
5 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
6 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
7 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
8 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
9 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Covered Products.** The term "Covered Products" means the La Terra
12 purses/clutches imported, distributed and/or sold in California by FDC.

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 FDC 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 Reformulated
23 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 DINP
26 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
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1 and 8270C or other methodology utilized by federal or state government agencies for the purpose
2 of determining the phthalate content in a solid substance.

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

10 (a) **Warning:** FDC may use the following warning ("**Warning**"):

11 **⚠ WARNING:** This product can expose you to chemicals including diisononyl
12 phthalate (DINP), which is known to the State of California to cause cancer. For
13 more information go to www.P65Warnings.ca.gov.

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

16 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

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

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

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

16 **4. MONETARY TERMS**

17 **4.1 Civil Penalty.** FDC shall pay \$3,000.00 as a Civil Penalty pursuant to Health and
18 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
19 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
20 Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

21 **4.1.1** Within ten (10) days of the Effective Date, FDC shall issue two separate
22 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to (b)
23 "Brodsky & Smith, LLC in Trust for Espinoza" in the amount of \$750.00. Payment owed to
24 Espinoza pursuant to this Section shall be delivered to the following payment address:

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

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

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

17 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, FDC shall pay
18 \$27,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
19 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
20 FDC attention, litigating and negotiating and obtaining judicial approval of a settlement in the
21 public interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
24 acting on his own behalf, and on behalf of the public interest, and FDC, and its parents,
25 shareholders, members, directors, officers, managers, employees, representatives, agents,
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
28 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
retailers, franchisees and cooperative members ("Downstream Releasees"), of all claims for
violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the

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

9 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
10 agents, representatives, attorneys, and 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 FDC, Defendant Releasees, and Downstream Releasees from any and all
13 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 Covered
17 Products manufactured, distributed, or sold by FDC, Defendant Releasees or Downstream
18 Releasees. With respect to the foregoing waivers and releases in this paragraph, Espinoza hereby
19 specifically waives any and all rights and benefits which he now has, or in the future may have,
20 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
21 follows:

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

28 5.3 FDC waives any and all claims against Espinoza, his attorneys and other
representatives, for any and all actions taken or statements made (or those that could have been
taken or made) by Espinoza and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
2 and/or with respect to Covered Products.

3 **6. INTEGRATION**

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

8 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 For Defendant:

20 CAMERON A. HOPKINS
21 A Professional Corporation
22 865 S. Figueroa Street, Suite 1388
Los Angeles, CA 90017

23 And

24 For Espinoza:

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

28 Any party, from time to time, may specify in writing to the other party a change of address to

1 which all notices and other communications shall be sent.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

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

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

19 **11. MODIFICATION**

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

22 **12. ATTORNEY'S 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 attorney's fees and costs.

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

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13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement 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:

AGREED TO:

Date: 3/18/2020
By: [Signature]
GABRIEL ESPINOZA

Date: 03/06/2020
By: [Signature]
FASHION DISTRIBUTION CENTER, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 10-1-2020

[Signature]
Judge of Superior Court
Stephen Pulido