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1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

**ENDORSED-
FILED**
San Francisco County Superior Court

FEB - 2 2023

CLERK OF THE COURT
BY: WILLIAM TRUPEK
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 GABRIEL ESPINOZA,

11 Plaintiff,

12 v.

13 TRADE LINES, INC.,

14 Defendant.

Case No.: CGC-22-601772

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: February 2, 2023

Hearing Time: 9:30 AM

Complaint Filed: 9/14/22

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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 Trade Lines, Inc.
4 (“**Trade Lines**” or “**Defendant**”) with Espinoza and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Espinoza is an individual residing in California who seeks
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Trade Lines is alleged to be a
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (“**DEHP**”) from its sales of Magazine Holders, including
12 but not limited to the Smartspace Magazine Holder, without providing a clear and reasonable
13 exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a chemical
14 known to the State of California to cause cancer and reproductive toxicity.

15 1.3 **Notice of Violation/Complaint.** On or about June 21, 2022, Espinoza served Trade
16 Lines and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of Magazine Holders,
19 including but not limited to the exemplar product identified therein (the “Smartspace Magazine
20 Holder”), exposes users in California to DEHP. No public enforcer has brought and is diligently
21 prosecuting the claims alleged in the Notice. On September 14, 2022, Espinoza filed a complaint
22 (the “**Complaint**”) in the matter.

23 1.4 **Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate that
24 this Court has jurisdiction over Defendant as to the allegations contained in the Complaint filed in
25 this matter, that venue is proper in the County of San Francisco, and that this Court has jurisdiction
26 to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
27 resolution of all claims which were or could have been raised in the Complaint based on the facts
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1 alleged in the Complaint and/or in the Notice.

2 1.5 **No Admission.** Defendant denies the material allegations contained in Espinoza's
3 Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
4 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or
5 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
6 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
7 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
8 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Magazine Holders, that
11 are manufactured, distributed and/or offered for sale in California by Trade Lines or its customers.

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

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is
16 signed by both Parties, and continuing thereafter, Covered Products that Trade Lines directly
17 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be
18 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
20 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
22 Product.

23 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose
27 of determining the phthalate content in a solid substance.
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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 is not a Reformulated Product. There
5 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
6 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
7 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

8 (a) **Warning**¹. The “Warning” shall consist of the statement:

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

13 (b) **Alternative Warning:** Trade Lines may, but is not required to, use the
14 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as
15 follows:

16 ⚠ **WARNING:** Cancer and Reproductive Harm - 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 ¹ If Trade Lines has testing indicating that use of the Covered Product will expose persons
24 to Diisononyl Phthalate (DINP) in lieu of DEHP, Trade Lines shall substitute the following
25 **Warning** in §§ 3.3(a): “⚠ **WARNING:** This product can expose you to chemicals including
26 Diisononyl Phthalate (DINP), which is known to the State of California to cause cancer. For more
27 information go to www.P65Warnings.ca.gov.” If Trade Lines has testing indicating that use of the
28 Covered Product will expose persons to Diisononyl Phthalate (DINP) in addition to DEHP, Trade
Lines shall substitute the following **Warning** in §§ 3.3(a): “⚠ **WARNING:** This product can
expose you to chemicals including Diisononyl Phthalate (DINP), which is known to the State of
California to cause cancer and di(2-ethylhexyl) phthalate (DEHP), which is known to the State of
California to cause cancer and birth defects or other reproductive harm. For more information go
to www.P65Warnings.ca.gov.”

1 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
2 automatic process, providing that the warning is displayed with such conspicuousness, as compared
3 with other words, statements, or designs as to render it likely to be read and understood by an
4 ordinary individual under customary conditions of purchase or use. A warning may be contained
5 in the same section of the packaging, labeling, or instruction booklet that states other safety
6 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
7 those other safety warnings.

8 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
9 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
10 Trade Lines offers Products for sale to consumers in California. The requirements of this Section
11 shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the
12 word "**WARNING**," appears on the product display page, or by otherwise prominently displaying
13 the warning to the purchaser prior to completing the purchase. To comply with this Section, Trade
14 Lines shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the
15 ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the
16 ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet
17 sellers, provide such sellers with written notice in accordance with Title 27, California Code of
18 Regulations, Section 25600.2. Third-party internet sellers of the Covered Product that have been
19 provided with written notice in accordance with Title 27, California Code of Regulations, Section
20 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning
21 requirements herein.

22 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
23 compliance with this Consent Judgment by either:

- 24 (a) adhering to §§ 3.3 and 3.4 of this Consent Judgment; or
25 (b) by complying with warning requirements adopted by the State of California's Office
26 of Environmental Health Hazard Assessment ("**OEHHA**") applicable to the product and
27 the exposure at issue after the Effective Date.
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1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Trade Lines shall pay \$1,000 as a Civil Penalty pursuant to Health
3 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
5 remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety
6 Code § 25249.12(d).

7 4.1.1 Within ten (10) days of the Effective Date, Trade Lines shall issue two
8 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750; and to (b)
9 “Brodsky & Smith in Trust for Espinoza” in the amount of \$250. Payment owed to Espinoza
10 pursuant to this Section shall be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky & Smith
13 Two Bala Plaza, Suite 805
14 Bala Cynwyd, PA 19004

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

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

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

 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Trade Lines shall pay
\$16,500 to Brodsky & Smith (“Brodsky & Smith”) as complete reimbursement for Espinoza’s

1 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Trade Lines
2 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
3 interest, pursuant to Code of Civil Procedure § 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
6 acting on his own behalf, and on behalf of the public interest, and Trade Lines, and its predecessors,
7 successors, direct and indirect parent companies, direct and indirect subsidiary companies,
8 companies under common control with any of the foregoing, affiliates, and its and their past,
9 present, and future officers, directors, shareholders, interest holders, members, partners, attorneys,
10 insurers, trustees, agents, employees, managers, representatives, assigns, and successors in interest,
11 and all persons acting by, through, under or in concert with them, and each of them ("**Defendant**
12 **Releasees**"), and all entities from whom they obtain and to whom they directly or indirectly
13 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
14 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
15 members, and their respective predecessors, successors, past, present, and future officers, direct
16 and indirect parent companies, direct and indirect subsidiary companies, companies under common
17 trol with any of the foregoing, affiliates, and its and their past, present and future officers, directors,
18 shareholders, interest holders, members, partners, attorneys, insurers, trustees, agents, employees,
19 managers, representatives, assigns, and successors in interest, and all persons acting by, through,
20 under or in concert with them, and each of them ("**Chain of Distribution Releasees**"), of all claims
21 for violations of Proposition 65 based on exposure to DEHP from use of the Covered Products as
22 set forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by
23 Trade Lines prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall
24 have preclusive effect such that no other actions by private enforcers, whether purporting to act in
25 his, her, or its interests or the public interest, shall be permitted to pursue and/or take any action
26 with respect to any violation of Proposition 65 based on exposure to DEHP that was alleged in the
27 Complaint, or that could have been brought pursuant to the Notice against Trade Lines, the other
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1 Defendant Releasees, and/or the Chain of Distribution Releasees, or any of them, with respect to
2 the Covered Products (“**Proposition 65 Claims**”).

3 5.2 In addition to the foregoing, Espinoza, 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 Trade Lines, Defendant Releasees, and Chain of Distribution Releasees,
7 and each of them, from any and all manner of actions, causes of action, claims, demands, rights,
8 suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses,
9 costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity,
10 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
11 related to or arising from Covered Products manufactured, distributed, or sold by Trade Lines,
12 Defendant Releasees or Chain of Distribution Releasees. With respect to the foregoing waivers and
13 releases in this paragraph, Espinoza hereby specifically waives any and all rights and benefits which
14 he now has, or in the future may have, conferred by virtue of the provisions of § 1542 of the
15 California Civil Code, which provides as follows:

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

20 Espinoza represents and warrants that he understands the significance and consequences of the
21 specific waiver of California Civil Code § 1542, and that as a result of the waiver, the foregoing
22 release is intended to, and does cover both known and unknown claims.

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

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
3 prior negotiations and understandings related hereto shall be deemed to have been merged within
4 it. There are no warranties, representations (oral or written, express or implied), other agreements,
5 or other terms of agreement other than those contained herein exist or have been made by any Party
6 with respect to the other Party or the subject matter of this Consent Judgment. No other agreements
7 not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to
8 bind any of the Parties hereto.

9 **7. GOVERNING LAW**

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

15 **8. NOTICES**

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

20 For Defendant:

21 Andrew Jablon
22 Resch Polster & Berger LLP
23 1840 Century Park East, 17th Floor
Los Angeles, CA 90067

For Espinoza:

Evan Smith
Brodsky & Smith
Two Bala Plaza, Ste. 805
Bala Cynwyd, PA 19004

24 Any party, from time to time, may specify in writing to the other party a change of address to
25 which all notices and other communications shall be sent.
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1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile or other
3 form of electronic transmission (e.g., via .PDF), each of which shall be deemed an original, and all
4 of which, when taken together, shall constitute one and 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, the
12 Parties agree to meet and confer on how to proceed and if an agreement is not reached within 30
13 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 written stipulation of the
20 Parties and the approval of the Court or upon the granting of a motion brought to the Court by either
21 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. SUCCESSORS AND ASSIGNS.

14.1 This Consent Judgment shall apply to and be binding upon the Parties and their successors or assigns of any of them.

15. AUTHORIZATION

15.1 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 in this Consent Judgment each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 12/16/22
By: [Signature]
GABRIEL ESPINOZA

Date: 9/16/22
By: [Signature]
TRADE LINES, INC..

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 2/2/23

[Signature]
Judge of Superior Court
RICHARD ULMER