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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 GABRIEL ESPINOSA,

11 Plaintiff,

12 vs.

13 CUSTOM LEATHERCRAFT
14 MANUFACTURING LLC and JOHNSTONE
15 SUPPLY, INC.,

16 Defendants.

Case No.: RG16802528

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Victoria S. Kolakowski

Dept.: 23

Hearing Date: January 19, 2017

Hearing Time: 3:00 PM

Reservation #: R-1802418

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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 Custom Leathercraft Manufacturing LLC (“Custom Leathercraft”), with Espinosa and Custom Leathercraft collectively referred to as the “Parties” and each of them as a “Party.” Espinosa is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Custom Leathercraft employs ten or more persons and is considered 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 Custom Leathercraft has exposed individuals to Di(2-ethylhexyl) phthalate (“DEHP”) from work gear without providing clear and reasonable warnings under 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 **Notices of Violation/Complaint.** On or about November 9, 2015, Espinosa served Custom Leathercraft, Johnstone Supply, Inc. (“Johnstone”) and various public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Custom Leathercraft and Johnstone were in violation of Proposition 65 for failing to warn consumers and customers that *Climate Gear Weather Resistant Work Gear, UPC No. 084298010156* exposed users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On February 3, 2016, Espinosa filed a complaint in the matter as captioned above (“Complaint”).

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Custom Leathercraft 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 Custom Leathercraft denies the material allegations contained in the Notice and
2 Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Custom Leathercraft of any fact, finding, issue of
4 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed
5 as an admission by Custom Leathercraft of any fact, finding, conclusion, issue of law, or violation
6 of law, such being specifically denied by Custom Leathercraft. However, this section shall not
7 diminish or otherwise affect the obligations, responsibilities, and duties of Custom Leathercraft
8 under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means work gear, including but
11 not limited to *Climate Gear Weather Resistant Work Gear, UPC No. 084298010156*.

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 Commencing ninety (90) days after the Effective Date, Custom Leathercraft shall
16 not manufacture or distribute for sale in California any Covered Product that contains more than
17 1,000 parts per million DEHP, unless the Covered Product is accompanied by the following
18 warning: "WARNING: This product contains chemicals known to the State of California to cause
19 cancer, birth defects and other reproductive harm."

20 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
21 Covered Product's packaging or labeling. The warning shall be affixed to or printed on the
22 packaging or labeling and displayed with such conspicuousness, as compared with other words,
23 statements, or designs as to render it likely to be read and understood by an ordinary individual
24 under customary conditions of purchase or use.

25 **4. MONETARY TERMS**

26 4.1 **Civil Penalty.** Custom Leathercraft shall pay a civil penalty of \$2,000.00 pursuant
27 to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California
28

1 Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office
2 of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
3 Espinosa, as provided by California Health & Safety Code § 25249.12(d).

4 4.1.1 Within ten (10) business days of the Effective Date, Custom Leathercraft
5 shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of
6 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$500.00.

7 Payment owed to Espinosa pursuant to this Section shall be delivered to the following payment
8 address:

9 Evan J. Smith, Esquire
10 Brodsky & Smith, LLC
11 Two Bala Plaza, Suite 510
12 Bala Cynwyd, PA 19004

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

15 For United States Postal Service Delivery:

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

21 For Non-United States Postal Service Delivery:

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

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

4.2 **Attorneys' Fees.** Custom Leathercraft shall pay \$20,500.00 to Brodsky & Smith,
LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Espinosa's attorneys' fees and
costs incurred as a result of investigating, bringing this matter to Custom Leathercraft's attention,
litigating and negotiating and obtaining judicial approval of a settlement in the public interest,

1 pursuant to Code of Civil Procedure section 1021.5. Payment shall be made within ten (10)
2 business days of the Effective Date and sent to the address for Brodsky & Smith set forth in section
3 4.1.1, above.

4 4.3 Custom Leathercraft shall pay the civil penalty and attorneys' fees in Sections 4.1
5 and 4.2 within ten (10) days of the Effective Date.

6 **5. RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa
8 acting in the public interest, and Custom Leathercraft and their parents, shareholders, members,
9 divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors,
10 predecessors, and assigns ("Defendant Releasees"), and all entities from whom they obtain and to
11 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
12 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
13 franchisees, cooperative members and Johnstone ("Downstream Releasees"), of all claims for
14 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the
15 Notice, with respect to any Covered Products manufactured, distributed, or sold by Custom
16 Leathercraft, Defendant Releasees, and Downstream Releasees prior to the Effective Date.
17 Compliance with the terms of this consent judgment constitutes compliance with Proposition 65
18 with regard to the Covered Products.

19 5.2 In addition to the foregoing, Espinosa, on behalf of himself, his past and current
20 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
21 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
22 legal action and releases any Custom Leathercraft, Defendant Releasees, and Downstream
23 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
24 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
25 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed
26 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
27 to or arising from Covered Products manufactured distributed or sold by Custom Leathercraft,
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1 Defendant Releasees, or Downstream Releasees. With respect to the foregoing waivers and
2 releases in this paragraph, Espinosa hereby specifically waives any and all rights and benefits which
3 she now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the
4 California Civil Code, which provides as follows:
5

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
8 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
9 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
10 SETTLEMENT WITH THE DEBTOR.

11 5.3 Custom Leathercraft waives any and all claims against Espinosa, his attorneys and
12 other representatives, for any and all actions taken or statements made (or those that could have
13 been taken or made) by Espinosa and his attorneys and other representatives, whether in the course
14 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and/or with respect to Covered Products.

16 5.4 Espinosa represents and warrants that, as of the date of the execution of this Consent
17 Judgment, he has no knowledge or information regarding any other alleged violation by Custom
18 Leathercraft.

19 6. INTEGRATION

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
21 any and all prior negotiations and understandings related hereto shall be deemed to have been
22 merged within it. No representations or terms of agreement other than those contained herein exist
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

24 7. GOVERNING LAW

25 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California and apply within the State of California. In the event that Proposition 65 is repealed or
27 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
28 Custom Leathercraft shall have no further obligations pursuant to this Consent Judgment with
respect to, and to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Custom Leathercraft:

7 Peg Carew Toledo
8 PEG CAREW TOLEDO, LAW CORPORATION
9 3001 Douglas Blvd., Suite 340
 Roseville, CA 95661

10 And

11 For Espinosa:

12 Evan Smith
13 Brodsky & Smith, LLC
14 2 Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and
20 the same document.

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

23 10.1 Espinosa agrees to comply with the requirements set forth in California Health &
24 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
25 and Custom Leathercraft agrees it shall support approval of such Motion.

26 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
27 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
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1 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
2 thirty (30) days, the case shall proceed on its normal course.

3 **11. MODIFICATION**

4 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
5 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEYS' FEES**

7 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
9 the unsuccessful party has acted with substantial justification. For purposes of this Consent
10 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
11 Discovery Act of 1986, Code of Civil Procedure Section 2016.010, et seq.

12 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **13. RETENTION OF JURISDICTION**

15 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

17 **14. AUTHORIZATION**

18 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective Party and have read, understood and agree to all of the terms and conditions of this
20 document and certifies that he or she is fully authorized by the Party he or she represents to execute
21 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
22 explicitly provided herein each Party is to bear its own attorneys' fees and costs.
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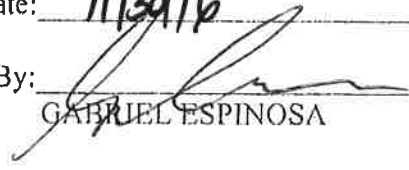
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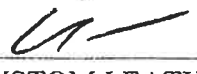
AGREED TO:

AGREED TO:

Date: 11/30/16

Date: 11/29/16

By: 
GABRIEL ESPINOSA

By: 
CUSTOM LEATHERCRAFT
MANUFACTURING LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court