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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 GABRIEL ESPINOSA,

13 Plaintiff,

14 v.

15 TECHNICRAFT PRODUCTS, INC.,

16 Defendant.

Case No.: RG17870844

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Ronni MacLaren

Dept.: 25

Hearing Date: November 16, 2017

Hearing Time: 9:00 AM

Reservation #: R- 1891915

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinosa acting on behalf of the public interest (hereinafter “Espinosa”) and Technicraft
4 Products, Inc. (“Technicraft” or “Defendant”) with Espinosa and Defendant collectively referred
5 to as the “Parties” and each of them as a “Party.” Espinosa is an individual residing in California
6 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in consumer products. Technicraft
8 employs ten or more individuals and is a “person in the course of doing business” for purposes of
9 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Espinosa alleges that Defendant has exposed
11 individuals to Diisononyl phthalate (DINP) from tire inflators without providing clear and
12 reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical
13 known to the State of California to cause cancer.

14 **1.3 Notices of Violation/Complaint.** On or about March 10, 2017, Espinosa served
15 Technicraft and various public enforcement agencies with a document entitled “60-Day Notice of
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
17 was in violation of Proposition 65 for failing to warn consumers and customers that flexible vinyl
18 hoses exposed users in California to DINP. No public enforcer has brought and is diligently
19 prosecuting the claims alleged in the Notice. On August 9, 2017, Espinosa filed a complaint in
20 the matter (the “Complaint”).

21 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
22 has jurisdiction over Defendant as to the allegations contained in the Complaint filed in this
23 matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
24 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
25 resolution of all claims which were or could have been raised in the Complaint based on the facts
26 alleged therein and/or in the Notice.

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

2. **DEFINITIONS**

2.1 **Covered Products.** The term "Covered Product" means tire inflators, including but not limited to UPC No. 7 32554 35001 9, that are manufactured, distributed and/or offered for sale in California by Technicraft, and that contain DINP.

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

3. **INJUNCTIVE RELIEF: WARNINGS**

3.1 Commencing ninety (90) days after the Effective Date, Technicraft shall not manufacture, import, or purchase for sale in California any Covered Product that contains more than 1,000 parts per million DINP, unless the Covered Product is accompanied by the following warning or warning that is compliant with the existing obligations of Proposition 65: "WARNING: This product contains a chemical known to the State of California to cause cancer, birth defects and other reproductive harm."

3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the Covered Product's packaging or labeling as then-required by Proposition 65. The warning shall be prominently affixed to or printed on the packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet

that states other safety warnings, if any, concerning the use of the product and shall be at least the same size as those other safety warnings.

4. MONETARY TERMS

4.1 **Civil Penalty.** Technicraft shall pay a Civil Penalty of \$3,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Espinosa, as provided by California Health & Safety Code § 25249.12(d).

4.1.1 Within ten (10) business days of the Effective Date, Technicraft shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$750.00. Payment owed to Espinosa pursuant to this Section shall be delivered to the following payment address:

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

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

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

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

1 4.2 **Attorney Fees.** Technicraft shall pay \$32,000.00 to Brodsky & Smith, LLC
2 ("Brodsky Smith") as complete reimbursement for Plaintiff Espinosa's attorneys' fees and costs
3 incurred as a result of investigating, bringing this matter to Technicraft's attention, litigating and
4 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
5 of Civil Procedure section 1021.5. Payment shall be made within fourteen (14) business days of
6 the Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

7 **5. RELEASE OF ALL CLAIMS**

8 5.1 This Consent Judgment is a full, final, and binding resolution among Espinosa
9 acting in the public interest, and Technicraft, and Technicraft's parents, shareholders, divisions,
10 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their representatives,
11 heirs, successors and assigns ("Defendant Releasees"), and all persons and/or entities from whom
12 they obtain and/or to whom they directly or indirectly distribute or sell Covered Products,
13 including but not limited to Wal-Mart Stores, Inc. and its subsidiaries and affiliates,
14 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
15 marketplace hosts; franchisees, and cooperative members ("Downstream Defendant Releasees").
16 of all claims for violations of Proposition 65 pertaining to the alleged failure to warn about
17 exposure to DINP from Covered Products as set forth in the Notice, with respect to any Covered
18 Products manufactured, distributed, or sold by Technicraft prior to one hundred twenty (120) days
19 after the Effective Date. Compliance by Technicraft with the terms of this Consent Judgment
20 constitutes compliance with Proposition 65 with regard to the Covered Products.

21 5.2 Espinosa and his attorneys represent and warrant that they are not aware of any
22 and have no intention to bring additional claims against any of the Defendant Releasees or
23 Downstream Defendant Releasees related to the Covered Product for other alleged violations of
24 Proposition 65.

25 5.3 In addition to the foregoing, Espinosa, on behalf of himself, his past and current
26 agents, representatives, attorneys, and successors and/or assignees, and not in his capacity as a
27 representative of the public, hereby waives all rights to institute or participate in, directly or
28

1 indirectly, any form of legal action and releases any Technicraft, Defendant Releasees, and
2 Downstream Defendant Releasees from any and all manner of actions, causes of action, claims,
3 demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages,
4 charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or
5 unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged
6 violations of Proposition 65 related to or arising from Covered Products manufactured distributed
7 or sold by Technicraft or Defendant Releasees. With respect to the foregoing waivers and
8 releases in this paragraph, Espinosa hereby specifically waives any and all rights and benefits
9 which he now has, or in the future may have, conferred by virtue of the provisions of Section
10 1542 of the California Civil Code, which provides as follows:

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

15 5.4 Technicraft waives any and all claims against Espinosa, his attorneys and other
16 representatives, for any and all actions taken or statements made (or those that could have been
17 taken or made) by Espinosa and his attorneys and other representatives, whether in the course of
18 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
and/or with respect to Covered Products.

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
23 exist 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

Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

8. NOTICES

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

For Defendant:

Technicraft Products Inc.
3765 St Johns Rd
Lima, OH 45806

With a copy to: John P. Archer
Kohrman Jackson & Krantz LLP
1375 East Ninth Street
29th Floor
Cleveland, Ohio 44114

And

For Espinosa:

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

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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and 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 and 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
7 the Court and shall be null and void if, for any reason, it is not approved by the Court. In such
8 case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached
9 within 30 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
12 Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall
13 proceed on 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
17 Party.

18 **12. ATTORNEY'S FEES**

19 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
20 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
21 unless the unsuccessful party has acted with substantial justification. For purposes of this
22 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
23 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **14. AUTHORIZATION**

5 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
6 their respective Parties and have read, understood and agree to all of the terms and conditions of
7 this document and certifies that he or she is fully authorized by the Party he or she represents to
8 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
9 Except as explicitly provided herein each Party is to bear its own fees and costs.

10
11 **AGREED TO:**

12
13 Date: 9/20/17

14 By: [Signature]

15 GABRIEL ESPINOSA

AGREED TO:

16 Date: 9/13/2017

17 By: [Signature]

18 TECHNICRAFT PRODUCTS, INC.

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

20 Dated: _____

21 _____
22 Judge of Superior Court
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