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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOSA,

12 Plaintiff,

13 vs.

14 HUFFY CORP.,

15 Defendant.

Case No. RG17860441

[PROPOSED] CONSENT JUDGMENT

Judge: Stephen M. Pulido

Dept.: 16

Hearing Date: August 22, 2017

Hearing Time: 3:00 PM

Reservation #: R-1866289

1 **1. Introduction**

2 1.1 On March 15, 2017, Gabriel Espinosa (“Espinosa”) served Huffy Corporation
3 (“Huffy”), Wal-Mart Stores, Inc. (“Walmart”) and various public enforcement agencies with a
4 document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*”
5 (the “Notice”). The Notice provided Huffy and such others, including public enforcers, with
6 notice that alleged that Huffy was in violation of California Health & Safety Code § 25249.6
7 (“Proposition 65”), for failing to warn consumers and customers that Huffy Handlebar Bags, UPC
8 No. 0 32447 00411 2 manufactured, sold and/or distributed by Huffy in California, exposed users
9 in California to the chemical Di(2-ethylhexyl) phthalate (DEHP). No public enforcer has
10 prosecuted the allegations set forth in the Notice.

11 1.2 On May 16, 2017, Espinosa filed a Complaint for Civil Penalties and Injunctive
12 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG17860441, against Huffy
13 alleging violations of Proposition 65.

14 1.3 Huffy is a corporation that employs more than ten persons under California Health
15 and Safety Code §25249.6 and offered the products for sale within the State of California.

16 1.4 Huffy and Espinosa are collectively referred to herein as, the “Parties.”

17 1.5 Espinosa’s Complaint alleges, among other things, that Huffy sold the products in
18 California and/or to California citizens, that the products contain DEHP, and that the resulting
19 exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons
20 to a chemical known to the State of California to cause both cancer and reproductive toxicity
21 without first providing a clear and reasonable warning to such individuals.

22 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
23 has jurisdiction over the allegations of violations contained in the Complaint and personal
24 jurisdiction over Huffy as to the acts alleged in the Complaint, that venue is proper in the County
25 of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of
26 the allegations contained in the Complaint.

27 1.7 The Parties enter into this Consent Judgment pursuant to a full settlement of
28 disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding

1 prolonged litigation. By execution of this Consent Judgment, Huffly does not admit any violation
2 of Proposition 65 and specifically denies that it has committed any such violation. Nothing in this
3 Consent Judgment shall be construed as an admission by Huffly of any fact, issue of law or
4 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an
5 admission by Huffly of any fact, issue of law, or violation of law. Nothing in this Consent
6 Judgment shall prejudice, waive, or impair any right, remedy or defense that Huffly may have in
7 any other future legal proceeding. However, this paragraph shall not diminish or otherwise affect
8 the obligations, responsibilities and duties of Huffly under this Consent Judgment.

9 1.8 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
10 date that the Consent Judgment is entered by the Court.

11 2. The Scope of the Consent Judgment

12 The scope of this Consent Judgment covers the following "Product/Products":

- 13 1. Huffly Handlebar Bags UPC #032447-004112-31516AR – model
14 00411CL;
- 15 2. Huffly Handlebar Bags UPC # 032447-00274-3 - model 00274XX;
- 16 3. Huffly Handlebar Bags UPC # 032447-00737-3 – model 00737CL.

17 In addition, the scope of the Consent Judgment covers all phthalates on the Prop 65 list
18 ("Chemicals"), including but not limited to:

- 19 • Di(2-ethylhexyl) phthalate (DEHP)
- 20 • Butyl benzyl phthalate (BBP)
- 21 • Di-n-butyl phthalate (DBP)
- 22 • Di-isodecyl phthalate (DIDP)
- 23 • Di-n-hexyl phthalate (DnHP)
- 24 • Di-isononyl phthalate (DINP).

25 3. Injunctive Relief

26 3.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
27 Huffly shall only ship, sell, or offer for sale in California, Reformulated Product pursuant to
28

1 Section 3.2 or Product that is labeled with a clear and reasonable warning pursuant to Section 3.3.
2 Huffy and its downstream retailers shall have no obligation to label Products that entered the
3 stream of commerce prior to the Effective Date or within ninety (90) days after the Effective
4 Date. For purposes of this Settlement Agreement, a "Reformulated Product" is Product that is in
5 compliance with the standard set forth below in Section 3.2.

6 3.2 "Reformulated Product" shall mean product that contains less than or equal to
7 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to CPSC-CH-C1001-09.3
8 Standard Operating Procedure for Determination of Phthalates method.

9 3.3 Commencing ninety (90) days after the Effective Date, Huffy shall, for all
10 Products it sells or distributes and that are intended for sale in California and that are not a
11 Reformulated Product, provide clear and reasonable warnings as set forth in subsection 3.3(a)
12 below. The warning shall be prominently placed with such conspicuousness as compared with
13 other words, statements, designs, or devices as to render it likely to be read and understood by an
14 ordinary individual under customary conditions before purchase. Each warning shall be provided
15 in a manner such that the consumer understands to which specific Product the warning applies, so
16 as to minimize the risk of consumer confusion.

17 (a) **Product Labeling.** Huffy shall affix a warning to the packaging, labeling
18 or directly on each Product they sell or distribute and that is intended for sale in California and
19 that is not a Reformulated Product that states:

20 WARNING: This product contains a chemical known to the state of California to
21 cause cancer and birth defects or other reproductive harm.

22 3.4 For Products manufactured prior to August 30, 2018, Huffy may affix a clear and
23 reasonable warning that complies with (a) the warning requirements in California Code of
24 Regulations, Title 27, Article 6 (Section § 25601 *et seq.*) that are operative on the Effective Date,
25 or (b) the warning requirements in California Code of Regulations, Title 27, Article 6 (Section §
26 25601 *et seq.*) that were approved on August 30, 2016 and become operative on August 30, 2018.

27 4. **Entry of Consent Judgment**

28 4.1 The Parties hereby request that the Court promptly enter this Consent Judgment.

1 Upon entry of this Consent Judgment, Espinosa and Hufffy waive their respective rights to a
2 hearing or trial on the allegations of the Complaint and 60-Day Notice.

3 **5. Release**

4 **5.1 Plaintiff's Public Release of Proposition 65 Claims.** This Consent Judgment is a
5 final and binding resolution between Plaintiff Espinosa, acting on his own behalf, and on behalf
6 of the public and in the public interest, and Defendant Hufffy, and its parents, subsidiaries,
7 affiliates, directors, officers, shareholders, successors and assigns, employees, agents, attorneys,
8 suppliers, downstream distributors/retailers/customers (including but not limited to Walmart and
9 SN Cycle and their respective parents, subsidiaries, affiliates, directors, officers, shareholders,
10 successors and assigns, employees, agents, attorneys, suppliers, and downstream
11 distributors/retailers/customers) (collectively, the "Hufffy Releasees") of any claims with respect
12 to any Products manufactured, distributed or sold by Hufffy Releasees on or prior to the date of
13 entry of this Consent Judgment, including but not limited to, any violation of Proposition 65 that
14 was or could have been asserted in the Complaint against Hufffy Releasees . This Consent
15 Judgment shall have preclusive effect such that no other person or entity, whether purporting to
16 act in his, her or its interests or the public interest shall be permitted to pursue and/or take any
17 action with respect to any violation of Proposition 65 that was alleged in the Complaint, or that
18 could have been brought pursuant to the Notice against Hufffy Releasees ("Proposition 65
19 Claims"). As to alleged exposures to the Chemicals in the product, compliance with the terms of
20 this Consent Judgment by Hufffy is deemed sufficient to satisfy all obligations concerning
21 compliance by Hufffy Releasees with the requirements of Proposition 65 with respect to the
22 Products.

23 **5.2 Plaintiff's Release of Additional Claims.** As to Espinosa for and in his
24 individual capacity only, this Consent Judgment shall have preclusive effect such that he shall not
25 be permitted to pursue and/or take any action with respect to any other statutory or common law
26 claim, to the fullest extent that any such claim was or could have been asserted by him against
27 Hufffy Releasees, of the Products based on their exposure of Espinosa to Chemicals in the
28 Products, or their failure to provide a clear and reasonable warning of exposure to Espinosa as

1 well as any other claim based in whole or in part on the facts alleged in the Complaint and the
2 Notice, based on actions committed by Huffy Releasees ("Chemical Exposure Claims").

3 **5.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to
4 Espinosa's public release of Proposition 65 Claims set forth in Section 5.1 ("Public Release") and
5 his individual release of Chemical Exposure Claims set forth in Section 5.2 ("Individual
6 Release"), Espinosa, acting on his own behalf and on behalf of the public with respect to the
7 Public Release and acting in his individual capacity with respect to the Individual Release, waives
8 all rights to institute any form of legal action, and releases all claims against Huffy Releasees,
9 who may use, maintain, distribute or sell the Products, for the Proposition 65 Claims and the
10 Chemical Exposure Claims (referred to collectively in this Section as "Claims"). In furtherance
11 of the foregoing, Espinosa, acting on his own behalf and on behalf of the public with respect to
12 the Public Release and acting in his individual capacity with respect to the Individual Release,
13 waives any and all rights and benefits which he now has, or in the future may have, conferred
14 upon him with respect to the Claims by virtue of the provisions of § 1542 of the California Civil
15 Code, which provides as follows:

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

21 **5.4 Huffy's Release of Plaintiff Espinosa.** Huffy Releasees hereby waive any and all
22 claims against Espinosa, his attorneys, and other representatives for any and all actions taken or
23 statements made (or those that could have been taken or made) by Espinosa and his attorneys and
24 other representatives, whether in the course of investigating claims or otherwise seeking
25 enforcement of Proposition 65 against Huffy in this matter.

26 **6. Enforcement of Judgment**

27 **6.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
28 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
Alameda County, giving the notice required by law, enforce the terms and conditions contained

1 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party
2 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation
3 of this Consent Judgment.

4 **7. Modification of Judgment**

5 7.1 This Consent Judgment may be modified only by written agreement of the Parties
6 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
7 provided by law and upon an entry of a modified Consent Judgment by the Court.

8 7.2 Should any court enter final judgment in a case brought by Espinosa or the public
9 or the People of California involving products that are of the same general type and function as
10 the Products and constructed from substantially the same materials that sets forth standards
11 defining when Proposition 65 warnings will or will not be required ("Alternative Standards"), or
12 if the California Attorney General's office otherwise provides written endorsement (i.e., a writing
13 that is circulated by the Attorney General that is not intended for the purpose of soliciting further
14 input or comments) of Alternative Standards applicable to products that are of the same general
15 type and function as the Products and constructed from substantially the same materials, Huffy
16 shall be entitled to seek a modification of this Consent Judgment on sixty (60) days' notice to
17 Espinosa so as to be able to utilize and rely on such Alternative Standards in lieu of those set forth
18 in Section 3 of this Consent Judgment. Espinosa shall not unreasonably contest any proposed
19 application to effectuate such a modification provided that the Products for which such a
20 modification is sought are of the same general type and function as those to which the Alternative
21 Standards apply.

22 **8. Settlement Payment**

23 8.1 In settlement of all the claims referred to in this Consent Judgment, and without
24 any admission of liability therefore, Huffy shall make the following monetary payments:

25 8.1.1 **Civil Penalty.** Within ten (10) business days of the entry of this Consent
26 Judgment by the Court, Huffy shall pay a total of \$3,000.00 in Civil Penalties in accordance with
27 this Section. The Civil Penalty payment will be allocated in accordance with California Health &
28 Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of

1 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the civil
2 penalty remitted to Espinosa. Within ten (10) business days of the entry of this Consent
3 Judgment by the Court, Huffey shall issue two separate checks for the Civil Penalty payment to (a)
4 "OEHHA" in the amount of \$2,250.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in
5 the amount of \$750.00. Payment owed to Espinosa pursuant to this Section shall be delivered to
6 the following payment address:

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

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

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

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

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

27 **8.1.2 Attorney Fees and Costs.** In addition to the payment above, Huffey shall
28 pay \$34,500.00 to Brodsky & Smith, LLC ("Brodsky & Smith") as complete reimbursement for
Espinosa's attorneys' fees and costs, including any investigation and laboratory costs or expert
fees, incurred in the course of bringing the Complaint and in enforcing Proposition 65, including
without limitation, preparation of the 60-Day Notice letter and discussions with the office of the
Attorney General. Payment shall be made within ten (10) business days of the entry of this
Consent Judgment by the Court and sent to the address for Brodsky & Smith set forth in Section

1 8.1.1, above.

2 9. **Notices**

3 9.1 Any and all notices between the Parties provided for or permitted under this
4 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class
5 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
6 party by the other party to the following addresses:

7 For Huff:

8 Cathleen Huang, Esq.
9 Bowles & Verna, LLP
2121 N. California Blvd., Suite 875
10 Walnut Creek, CA 94596-8180

11 For Espinosa:

12 Evan J. Smith
13 BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212

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

16 10. **Authority to Stipulate**

17 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
19 the party represented and legally to bind that party.

20 11. **Counterparts**

21 11.1 This Stipulation may be signed in counterparts and shall be binding upon the
22 Parties hereto as if all said Parties executed the original hereof.

23 12. **Retention of Jurisdiction**

24 12.1 This Court shall retain jurisdiction of this matter to implement the Consent
25 Judgment.

26 13. **Service on the Attorney General**

27 13.1 Espinosa shall serve a copy of this Consent Judgment, signed by all Parties, on the
28 California Attorney General on behalf of the Parties so that the Attorney General may review this

1 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)
2 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
3 and in the absence of any written objection by the Attorney General to the terms of this Consent
4 Judgment, the Parties may then submit it to the Court for Approval.

5 **14. Entire Agreement**

6 14.1 This Consent Judgment contains the sole and entire agreement and understanding
7 of the Parties with respect to the entire subject matter hereof, and any and all discussions,
8 negotiations, commitment and understandings related thereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
11 to exist or to bind any of the Parties.

12 **15. Governing Law and Construction**

13 15.1 The validity, construction and performance of this Consent Judgment shall be
14 governed by the laws of the State of California, without reference to any conflicts of law
15 provisions of California law.

16 **16. Court Approval**

17 16.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
18 effect, and cannot be used in any proceeding for any purpose.

19 **IT IS SO STIPULATED:**

20
21 Dated: _____

Dated: June 7, 2017

22
23 By: _____
24 Gabriel Espinosa

By: Ami M. Boyl
Huffy Corporation
as SENIOR VICE PRESIDENT,
GENERAL COUNSEL & SECRETARY

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

26
27 Dated: _____

Judge of Superior Court

1 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)
2 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
3 and in the absence of any written objection by the Attorney General to the terms of this Consent
4 Judgment, the Parties may then submit it to the Court for Approval.

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7 of the Parties with respect to the entire subject matter hereof, and any and all discussions,
8 negotiations, commitment and understandings related thereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
11 to exist or to bind any of the Parties.

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14 governed by the laws of the State of California, without reference to any conflicts of law
15 provisions of California law.

16 **16. Court Approval**

17 16.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
18 effect, and cannot be used in any proceeding for any purpose.

19 **IT IS SO STIPULATED:**

20
21 Dated: 7/1/2017

Dated: _____

22
23 By: 
24 Gabriel Espinosa

By: _____
Huffy Corporation

25
26 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

27
28 Dated: _____

Judge of Superior Court