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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOSA,

12 Plaintiff,

13 v.

14 E.S. RITCHIE & SONS, INC., WEST MARINE,
15 INC.,

16 Defendants.

Case No.: RG17880971

CONSENT JUDGMENT

Judge: Jo-Lynnc Q. Lee

Dept.: 18

Hearing Date: May 1, 2018

Hearing Time: 3:00 PM

Reservation #: R-1940273

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 E.S. Ritchie & Sons,
4 Inc. (“E.S. Ritchie” or “Defendant”) with Espinosa and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Espinosa is an individual residing in California that 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. E.S. Ritchie 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.** Espinosa alleges that Defendant has exposed
11 individuals to Diisononyl phthalate (DINP) from Ritchie Wet Notes Waterproof Notebooks without
12 providing clear and reasonable warnings under Proposition 65. DINP is listed under Proposition
13 65 as a chemical known to the State of California to cause cancer.

14 1.3 **Notice of Violation/Complaint.** On or about June 12, 2017, Espinosa served E.S.
15 Ritchie, and various public enforcement agencies with documents 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 Ritchie Wet
18 Notes Waterproof Notebooks exposed users in California to DINP. No public enforcer has brought
19 and is diligently prosecuting the claims alleged in the Notice. On November 2, 2017, Espinosa
20 filed a complaint (the “Complaint”) in the matter.

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

1
2 1.5 Defendant denies the material allegations contained in Espinosa’s Notice and
3 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
4 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
5 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
6 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
7 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
8 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Ritchie Wet Notes
11 Waterproof Notebooks that are manufactured, distributed and/or offered for sale in California by
12 E.S. Ritchie.

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 As of the date this Consent Judgment is signed by both Parties, E.S. Ritchie shall
17 not manufacture or order from any supplier any Covered Products intended for retail sale in
18 California that contains DINP on any component to which consumers are exposed in excess of
19 0.1% (1,000 ppm) (hereinafter “Reformulated Products”) unless the Covered Product is
20 accompanied by a warning that complies with Article 6 of Title 27 of the California Code of
21 Regulations. Covered Products sold by E.S. Ritchie before the date this Consent Judgment is signed
22 by both Parties may sell through without a warning even if not Reformulated Products.. Until
23 August 30, 2018, the warning shall consist of either:

24 (a) The statement: “WARNING: This product contains a chemical known to the State
25 of California to cause cancer [and birth defects or other reproductive harm].”; or

26 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle
27 with a bold black outline to the left of the word “warning” in bold all capital letters, followed
28 by the statement “This product can expose you to chemicals including Di(2-

1 ethylhexyl)phthalate (DINP), which is known to the State of California to cause cancer [and
2 birth defects or other reproductive harm]. For more information, go to
3 www.P65Warnings.ca.gov.”; or (2) a warning consisting of a symbol that is a black
4 exclamation point in a yellow equilateral triangle with a bold black outline to the left of the
5 word “warning” in bold all capital letters, followed by the statement “Cancer and
6 Reproductive Harm - www.P65Warnings.ca.gov.”¹

7 For products manufactured on and after August 30, 2018, the warning set forth in Section 3.1(b)
8 shall be used.

9 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
10 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
11 automatic process, providing that the warning is displayed with such conspicuousness, as compared
12 with other words, statements, or designs as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use. A warning may be contained
14 in the same section of the packaging, labeling, or instruction booklet that states other safety
15 warnings, if any, concerning the use of the product and shall be at least the same size as those other
16 safety warnings.

17 **4. MONETARY TERMS**

18 4.1 **Civil Penalty.** E.S. Ritchie shall pay a Civil Penalty of \$2,000.00 pursuant to Health
19 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
20 Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of
21 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
22 Espinosa, as provided by California Health & Safety Code § 25249.12(d).

23 4.1.1 Within fourteen (14) business days of the Effective Date, E.S. Ritchie shall
24 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
25 \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$500.00.
26

27 ¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 Payment owed to Espinosa pursuant to this Section shall be delivered to the following payment
2 address:

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

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

23 4.2 **Conditional Civil Penalty.** One Hundred Eighty (180) days after the Effective
24 Date, E.S. Ritchie shall make a Conditional Civil Penalty payment of \$2,000.00 on the same terms
25 as set forth in Section 4.1.1 pertaining to the Civil Penalty. Pursuant to Title 11 California Code of
26 Regulations, Section 3203(c), Espinosa agrees that the Conditional Civil Penalty payment shall be
27 waived in its entirety if, on or before the date the Conditional Civil Penalty payment is due, an
28 officer of E.S. Ritchie provides Espinosa with a signed declaration certifying that all Covered
Products it ships for sale or distributes for sale in California as of the date of its certification are
Reformulated Products or are marked with the warnings required by this Consent Decree
(hereinafter "Labeled Product") and that E.S. Ritchie will continue to offer only Reformulated
Products or Labeled Products in California in the future. The option to provide a declaration

1 certifying its complete early reformulation or labeling of the Covered Products in lieu of making
2 the Conditional Civil Penalty payment otherwise required by this Section is a material term, and
3 time is of the essence.

4 4.3 **Attorney Fees.** E.S. Ritchie shall pay \$23,000.00 to Brodsky & Smith, LLC
5 (“Brodsky Smith”) as complete reimbursement for Plaintiff Espinosa’s attorneys’ fees and costs
6 incurred as a result of investigating, bringing this matter to E.S. Ritchie’s attention, litigating and
7 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
8 of Civil Procedure section 1021.5.

9 4.4 E.S. Ritchie shall pay the Civil Penalty and Attorney Fees identified in Sections 4.1
10 and 4.3 within fourteen (14) days of the Effective Date.

11 **5. RELEASE OF ALL CLAIMS**

12 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa
13 acting on his own behalf, and on behalf of the public interest, and E.S. Ritchie, and its parents,
14 shareholders, members, directors, officers, managers, employees, representatives, agents,
15 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
16 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
17 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
18 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
19 retailers, franchisees, and cooperative members, including but not limited to West Marine, Inc.
20 (“Downstream Releasees”), of all claims for violations of Proposition 65 based on exposure to
21 DINP from Covered Products as set forth in the Notice, with respect to any Covered Products
22 manufactured, distributed, or sold by E.S. Ritchie prior to the Effective Date. This Consent
23 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
24 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
25 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
26 been brought pursuant to the Notice against E.S. Ritchie or its Downstream Releasees of the
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1 Product including but not limited to ("Proposition 65 Claims"). Compliance with the terms of this
2 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

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

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

21 5.3 E.S. Ritchie waives any and all claims against Espinosa, his attorneys and other
22 representatives, for any and all actions taken or statements made (or those that could have been
23 taken or made) by Espinosa and his attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and/or with respect to Covered Products.

26 **6. INTEGRATION**

27 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
28 any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party
13 by the other Party at the following addresses:

14 For Defendant:

15 Jon Sherman, President
16 Ritchie Navigation
17 243 Oak Street
18 Pembroke, MA 02359

19 And

20 For Espinosa:

21 Evan Smith
22 Brodsky & Smith, LLC
23 9595 Wilshire Blvd., Ste. 900
24 Beverly Hills, CA 90212

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

27 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

28 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 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 the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
8 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
9 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 Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 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 Party.

17 **12. ATTORNEY’S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing Party’s reasonable attorney’s fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**


26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood and agree to all of the terms and conditions of this
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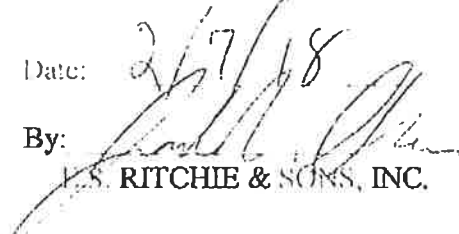
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document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 3/3/18
By: 
GABRIEL ESPINOSA

Date: 2/7/18
By: 
S. RITCHIE & SONS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court