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14 *Attorneys for Plaintiff CA Citizen Protection Group, LLC*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

GABRIEL ESPINOSA and CA CITIZEN  
PROTECTION GROUP, LLC, a California  
limited liability company,

Plaintiffs,

v.

DGL GROUP, LTD.,

Defendant.

Case No.: RG19007043

**CONSENT JUDGMENT**

Judge: Paul D. Herbert  
Dept.: 20  
Hearing Date: August 19, 2020  
Hearing Time: 3:00 PM  
Reservation #: R-2184289

1           **1. INTRODUCTION**

2  
3           **1.1 The Parties.** This Consent Judgment is entered into by and between plaintiffs  
4 Gabriel Espinosa (“Espinosa”) and CA Citizen Protection Group, LLC (“CACPG”), acting on  
5 behalf of the public interest (collectively “Plaintiffs”) and DGL Group Ltd. (“DGL”) with Plaintiffs  
6 and DGL collectively referred to as the “Parties” and each of them as a “Party.”

7                 1.1.1 Plaintiff Espinosa is an individual residing in California that seeks to  
8 promote awareness of exposures to toxic chemicals and improve human health by reducing  
9 or eliminating hazardous substances contained in consumer products.

10                1.1.2 Plaintiff CACPG is an organization dedicated to reducing the amount of  
11 chemical toxins in consumer products, the promotion of human health, environmental  
12 safety, and improvement of worker and consumer safety.

13                1.1.3 Defendant DGL is alleged to be a person in the course of doing business for  
14 purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 *et seq.*

15           **1.2 Allegations and Representations.** Plaintiffs allege that DGL has exposed  
16 individuals to di(2-ethylhexyl) phthalate (DEHP) and diisononyl phthalate (DINP) from its sales of  
17 headphones without providing a clear and reasonable exposure warning pursuant to Proposition 65.  
18 DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer  
19 and reproductive toxicity. DINP is listed under Proposition 65 as a chemical known to the State of  
20 California to cause cancer.

21           **1.3 Notices of Violation/Complaint.** On or about November 8, 2018, Espinosa served  
22 DGL, and various public enforcement agencies with documents entitled “60-Day Notice of  
23 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Espinosa Notice”), alleging that  
24 DGL violated Proposition 65 for failing to warn consumers and customers that headphones expose  
25 users in California to DEHP.

26                1.3.1 On November 17, 2018, CA Citizen Protection Group served DGL, and  
27 various public enforcement agencies with documents entitled “Sixty-Day Notice of Intent  
28 to Sue for Violations of the Safe Drinking Water and Toxic Enforcement Act of 1986”

1 (“CCPG Notice”), alleging that DGL violated Proposition 65 for failing to warn consumers  
2 and customers that Folding Fathead Stereo Headphones expose users in California to DEHP  
3 and DINP.

4 1.3.2 On February 15, 2019, Espinosa filed a complaint (the “Complaint”) in the  
5 matter.

6 1.3.3 On March 16, 2020, a First Amended Complaint was filed which adds CA  
7 Citizen Protection Group as a plaintiff and adds the allegations contained in the CCPG  
8 Notice.

9 1.3.4 No public enforcer has brought and is diligently prosecuting the claims  
10 alleged in the Espinosa Notice and/or the CCPG Notice.

11 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
12 jurisdiction over DGL as to the allegations contained in the Complaint and First Amended  
13 Complaint filed in this matter, that venue is proper in the County of Alameda, and that this Court  
14 has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full  
15 and final binding resolution of all claims which were or could have been raised in the Complaint  
16 and First Amended Complaint based on the facts alleged therein and/or in the Espinosa Notice and  
17 CCPG Notice.

18 1.5 DGL denies the material allegations contained in the Espinosa Notice, CCPG  
19 Notice, Complaint and First Amended Complaint. DGL maintains that it has not violated  
20 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by DGL of  
21 any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment  
22 constitute or be construed as an admission by DGL of any fact, finding, conclusion, issue of law,  
23 or violation of law, such being specifically denied by DGL. However, this section shall not diminish  
24 or otherwise affect the obligations, responsibilities, and duties of DGL under this Consent  
25 Judgment.

1       **2. DEFINITIONS**

2           **2.1 Covered Products.** The term “Covered Products” means headphones, including,  
3 but not limited to Hype Cat Ears LED headphones and Folding Fatheads Stereo headphones that  
4 are manufactured, distributed and/or offered for sale in California by DGL.

5           **2.2 Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
6 entered as a Judgment of the Court.

7       **3. INJUNCTIVE RELIEF: WARNINGS**

8           **3.1 Reformulation of Covered Products.** As of the Effective Date, Covered Products  
9 that DGL directly manufactures, imports, distributes, sells, or offers for sale in California shall  
10 either: (a) be Reformulated Products pursuant to Section 3.2, below; or (b) be labeled with a clear  
11 and reasonable warning pursuant to Sections 3.3 and 3.4, below.

12                   3.1.1 For purposes of this Consent Judgment, a “Reformulated Product” is a  
13 Covered Product that is in compliance with the standard set forth in Section 3.2 below.

14                   3.1.2 The warning requirement set forth in Sections 3.3 and 3.4 shall not apply to  
15 any Reformulated Product.

16           **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
17 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP and  
18 less than or equal to 0.1% (1,000 parts per million (ppm)) of DINP when analyzed pursuant to U.S.  
19 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology  
20 utilized by federal or state government agencies for the purpose of determining the phthalate  
21 content in a solid substance. DGL may rely on its suppliers’ test results.

22           **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing  
23 thereafter, a clear and reasonable exposure warning as set forth in this Section 3.3 and Section 3.4  
24 must be provided for all Covered Products that DGL manufactures, imports, distributes, sells, or  
25 offers for sale in California that is not a Reformulated Product. There shall be no obligation for  
26 DGL to provide a warning for Covered Products that enter the stream of commerce prior to the  
27  
28

Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in Sections 3.3(a) or (b), respectively:

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

**⚠ WARNING:** This product can expose you to chemicals including 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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** DGL may, but is not required to, use the alternative short-form warning as set forth in this Section 3.3(b) (“**Alternative Warning**”) as follows:

**⚠ WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).<sup>1</sup>

3.4 A **Warning** or **Alternative Warning** provided pursuant to Section 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING.**” The warning shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is 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 Covered Product and shall be at least the same size as those other safety warnings.

<sup>1</sup> To the extent DGL determines that the Covered Products for which a warning statement is required under Section 3.3 above contain DINP concentrations in excess of 1,000 ppm, *and do not* contain DEHP in concentrations in excess of 1,000 ppm, DGL shall substitute DINP for DEHP in the **Warning** shown in Section 3.3(a) above. In this event, DGL shall delete the phrase “and birth defects or other reproductive harm” from the **Warning** in Section 3.3(a), and shall delete the phrase “and Reproductive Harm” from the **Alternative Warning** of Section 3.3(b) above.

1 If DGL sells Covered Products via an internet website to customers located in California.  
2 the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
3 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the  
4 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
5 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
6 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
7 immediately following the display, description, price, or checkout listing of the Covered Product.  
8 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
9 it with the product(s) to which the warning applies.

10 3.5 **Compliance with Warning Regulations.** DGL shall be deemed to be in  
11 compliance with the warning requirements of this Consent Judgment by either adhering to  
12 Sections 3.3 and 3.4 of this Consent Judgment or by complying with any of the safe harbor warning  
13 requirements as set forth in the regulations of the State of California's Office of Environmental  
14 Health Hazard Assessment ("OEHHA") and in effect after the Effective Date.

#### 15 **4. MONETARY TERMS**

16 4.1 **Total Amount of Settlement Payment.** The total settlement amount to be paid by  
17 DGL is \$25,000.00.

18 4.2 **Civil Penalty.** DGL shall pay \$2,000.00 as a Civil Penalty pursuant to Health and  
19 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
20 Code section 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the  
21 Civil Penalty remitted to Plaintiffs, as provided by California Health & Safety Code  
22 section 25249.12(d).

23 4.1.1 Within ten (10) business days of the Effective Date, DGL shall issue three  
24 (3) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;  
25 (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$250.00, and (c) "Khansari  
26 Law Corp in trust for CA Citizen Protection Group, LLC" in the amount of \$250.00. Payment  
27 owed to Plaintiffs pursuant to this Section shall be delivered to the following payment address:  
28

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

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

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

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

21 4.3 **Attorneys' Fees Paid to Counsel for Espinosa.** Within ten (10) business days of  
22 the Effective Date, DGL shall pay \$16,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as  
23 complete reimbursement for Espinosa's attorneys' fees and costs incurred as a result of  
24 investigating, bringing this matter to DGL's attention, litigating and negotiating and obtaining  
25 judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure section  
26 1021.5.

27 4.4 **Attorneys' Fees Paid to Counsel for CA Citizen Protection Group, LLC.** Within  
28 ten (10) business days of the Effective Date, DGL shall pay \$6,500.00 to Khansari Law Corporation  
as complete reimbursement for CA Citizen Protection Group, LLC's attorneys' fees and costs  
incurred as a result of investigating, bringing this matter to DGL's attention, litigating and  
negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code  
of Civil Procedure section 1021.5.

1       **5. RELEASE OF ALL CLAIMS**

2           5.1     This Consent Judgment is a full, final, and binding resolution between Plaintiffs  
3 acting on their own behalf, and on behalf of the public interest, and DGL, and its parents,  
4 shareholders, members, directors, officers, managers, employees, representatives, agents,  
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, affiliates, and their  
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they  
7 obtain, or in the past have obtained, and to whom they directly or indirectly distribute or sell, or in  
8 the past have directly or indirectly distributed or sold, Covered Products, including but not limited  
9 to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,  
10 franchisees, and cooperative members, including but not limited to 1616 Holdings, Inc., formerly  
11 known as Five below, Inc., Five Below Merchandising, Inc., Marshalls of MA, Inc., The TJX  
12 Companies, Inc. and each of their parents, shareholders, members, directors, officers, managers,  
13 employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister  
14 companies, affiliates, and their predecessors, successors and assigns (“Downstream Releasees”), of  
15 all claims for violations of Proposition 65 based on exposure to DEHP and DINP from Covered  
16 Products as set forth in the Espinosa Notice, CCPG Notice, the Complaint and First Amended  
17 Complaint, with respect to any Covered Products manufactured, distributed, or sold by DGL prior  
18 to the Effective Date. This Consent Judgment shall have preclusive effect such that no other person  
19 or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted  
20 to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in  
21 the Complaint or the First Amended Complaint, or that could have been brought pursuant to the  
22 Espinosa Notice and CCPG Notice against DGL, Defendant Releasees and/or the Downstream  
23 Releasees of the Covered Products (“Proposition 65 Claims”). Compliance with the terms of this  
24 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

25           5.2     In addition to the foregoing, Plaintiffs, on behalf of themselves, their past and  
26 current agents, representatives, attorneys, and successors and/or assignees, and not in their  
27 representative capacity, hereby waive all rights to institute or participate in, directly or indirectly,  
28



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

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

15 5.3 DGL waives any and all claims against Plaintiffs, their 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 Plaintiffs and their attorneys and other representatives, whether in the course of  
18 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
19 and/or with respect to Covered Products.

## 20 6. INTEGRATION

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

## 25 7. GOVERNING LAW

26 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
27 California and apply within the State of California. In the event that Proposition 65 is repealed or  
28 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then DGL.

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

3 **8. NOTICES**

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

8 For DGL:

9 Peg Carew Toledo  
10 Arnold & Porter Kaye Scholer LLP  
11 Three Embarcadero Center | 10th Floor  
San Francisco, CA 94111-4024

12 For Gabriel Espinosa:

13 Evan Smith  
14 Brodsky & Smith, LLC  
9595 Wilshire Blvd., Ste. 900  
15 Beverly Hills, CA 90212

16 For CA Citizen Protection Group, LLC:

17 Andre A. Khansari (SBN 223528)  
18 Khansari LAW CORPORATION  
11845 Olympic Blvd., Suite 1000  
Los Angeles, CA 90064

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

22 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
23 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
24 the same document.

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)/COURT**  
2 **APPROVAL**

3 10.1 Plaintiffs agree to comply with the requirements set forth in California Health &  
4 Safety Code section 25249.7(f) and to promptly bring a Motion for Approval of this Consent  
5 Judgment. DGL 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, the  
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
9 thirty (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  
28

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: \_\_\_\_\_

Date: June 16, 2020

By: \_\_\_\_\_  
GABRIEL ESPINOSA

By:  \_\_\_\_\_  
DGL GROUP LTD.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CA CITIZEN PROTECTION GROUP,  
LLC

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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: 12/10/19

Date: \_\_\_\_\_

By:   
GABRIEL ESPINOSA

By: \_\_\_\_\_  
DGL GROUP LTD.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CA CITIZEN PROTECTION GROUP,  
LLC

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

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: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
GABRIEL ESPINOSA

By: \_\_\_\_\_  
DGL GROUP LTD.

**AGREED TO:**

Date: 12/9/19

By: Tal Ohana  
CA CITIZEN PROTECTION GROUP,  
LLC

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court