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

11 GABRIEL ESPINOSA,

12 Plaintiff,

13 v.

14 UNIVERSAL CITY STUDIOS LLC,

15 Defendant.

Case No.: RG19035417

**CONSENT JUDGMENT**

Judge: Julia Spain

Dept.: 520

Hearing Date: January 8, 2020

Hearing Time: 2:00 PM

Reservation #: R-2131075

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 Universal City Studios  
4 LLC (“Universal City Studios” or “Defendant” erroneously named as “Universal City Studios,  
5 LLC” in the Notice referred to in Section 1.3 below) with Espinosa and Defendant collectively  
6 referred to as the “Parties” and each of them as a “Party.” Espinosa is an individual residing in  
7 California that seeks to promote awareness of exposures to toxic chemicals and improve human  
8 health by reducing or eliminating hazardous substances contained in consumer products. Universal  
9 City Studios is alleged to be a person in the course of doing business for purposes of Proposition  
10 65, Cal. Health & Safety Code §§ 25249.6 et seq.

11           **1.2 Allegations and Representations.** Espinosa alleges that Defendant has exposed  
12 individuals to diisononyl phthalate (DINP) from its sales of Transformers Badge IDs & Reels  
13 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is  
14 listed under Proposition 65 as a chemical known to the State of California to cause cancer.

15           **1.3 Notice of Violation/Complaint.** On or about May 15, 2019, Espinosa served  
16 Universal City Studios, and various public enforcement agencies with documents entitled “60-Day  
17 Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that  
18 Defendant violated Proposition 65 for failing to warn consumers and customers that use of  
19 Transformers Badge IDs & Reels expose users in California to DINP. The Notice was filed with  
20 the California Attorney General’s Office and was assigned AG Number 2019-00957. No public  
21 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. While Hasbro,  
22 Inc. and Hasbro International, Inc. were also named in the Notice, these two Hasbro entities were  
23 only licensors of intellectual property, the Transformer mark, and were not the manufacturer,  
24 distributor or retailer, have no liability regarding the Covered Product or this Notice and thus, were  
25 not brought into this suit. In addition, while Transformers Supply Vault – 92 was named in the  
26 Notice as a Retailer, that is the name of a company store of Universal City Studios, and not a  
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1 separate legal entity, and therefore is not separately brought into this suit. On September 17, 2019,  
2 Espinosa filed a complaint (the “Complaint”) in the matter.

3 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
4 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
5 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
6 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
7 claims which were or could have been raised in the Complaint based on the facts alleged therein  
8 and/or in the Notice.

9 1.5 Defendant denies the material allegations contained in the Notice and Complaint  
10 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
11 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
12 shall compliance with this Consent Judgment constitute or be construed as an admission by  
13 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
14 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
15 responsibilities, and duties of Defendant under this Consent Judgment.

## 16 **2. DEFINITIONS**

17 2.1 **Covered Products.** The term “Covered Products” means Transformers Badge IDs  
18 & Reels – UPC #400013188670, that were or are manufactured, distributed and/or offered for sale  
19 in California by Universal City Studios.

20 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
21 entered as a Judgment of the Court.

## 22 **3. INJUNCTIVE RELIEF: WARNINGS**

23 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is  
24 signed by both Parties, and continuing thereafter, Covered Products that Universal City Studios  
25 directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
26 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
27 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
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1 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §  
2 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
3 Product.

4       **3.2 Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
5 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DINP  
6 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
7 and 8270C or other methodology utilized by federal or state government agencies for the purpose  
8 of determining the phthalate content in a solid substance.

9       **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
10 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
11 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,  
12 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There  
13 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream  
14 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall  
15 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

17       ⚠ **WARNING:** This product can expose you to chemicals including diisononyl  
18 phthalate (DINP), which is known to the State of California to cause cancer. For  
19 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

20       (b) **Alternative Warning:** Universal City Studios may, but is not required to, use the  
21 alternative short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

22       ⚠ **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

23       **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word  
24 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
25 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
26 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
27 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
28 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the

1 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
2 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
3 with other words, statements, or designs as to render it likely to be read and understood by an  
4 ordinary individual under customary conditions of purchase or use. A warning may be contained  
5 in the same section of the packaging, labeling, or instruction booklet that states other safety  
6 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
7 those other safety warnings.

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

17 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
18 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
19 Judgment or by complying with warning requirements adopted by the State of California's Office  
20 of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

#### 21 **4. MONETARY TERMS**

22 4.1 **Civil Penalty.** Universal City Studios shall pay \$4,500.00 as a Civil Penalty  
23 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with  
24 California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the  
25 remaining 25% of the Civil Penalty remitted to Espinosa, as provided by California Health & Safety  
26 Code § 25249.12(d).

1                   4.1.1 Within thirty (30) days of the later of (i) the Effective Date, or (ii) the date  
2 Espinosa provides to Universal City Studios a duly completed and signed Request for Taxpayer  
3 Identification Number and Certification (IRS Form W-9), Universal City Studios shall issue two  
4 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,375.00; and  
5 to (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$1,125.00. Payment owed  
6 to Espinosa pursuant to this Section shall be delivered to the following payment address:

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

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

12                   For United States Postal Service Delivery:

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

16                   For Non-United States Postal Service Delivery:

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

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

22                   4.2     **Attorneys' Fees.** Within thirty (30) days of the later of (i) the Effective Date, or (ii)  
23 the date Brodsky & Smith, LLC provides to Universal City Studios a duly completed and signed  
24 Request for Taxpayer Identification Number and Certification (IRS Form W-9), Universal City  
25 Studios shall pay \$39,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete  
26 reimbursement for Espinosa's attorneys' fees and costs incurred as a result of investigating,  
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bringing this matter to Universal City Studios' attention, litigating and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

## **5. RELEASE OF ALL CLAIMS**

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

5.2 In addition to the foregoing, Espinosa, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases Universal City Studios, Defendant Releasees, and Downstream Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,

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

9  
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
15 DEBTOR OR RELEASED PARTY.

16 5.3 Universal City Studios waives any and all claims against Espinosa, his attorneys and  
17 other representatives, for any and all actions taken or statements made (or those that could have  
18 been taken or made) by Espinosa and his attorneys and other representatives, whether in the course  
19 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
20 and/or with respect to Covered Products.

## 21 6. INTEGRATION

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

## 26 7. GOVERNING LAW

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

7               Donald C. Nanney  
8               Cozen O'Connor  
9               601 S. Figueroa Street, Suite 3700  
                Los Angeles, CA 90017

10 And

11 For Espinosa:

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

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 Defendant 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, the  
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1 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
2 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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

15 **13. RETENTION OF JURISDICTION**

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

18 **14. AUTHORIZATION**

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

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

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

**AGREED TO:**

Date: 10/30/19

UNIVERSAL CITY STUDIOS LLC,  
a Delaware limited liability company,  
By: Shannon Alexander  
Shannon H. Alexander,  
Senior Vice President & Authorized Signatory

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

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

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

1 **AGREED TO:**

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3 Date: 11/20/19

4 By: [Signature]

5 GABRIEL ESPINOSA

**AGREED TO:**

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

UNIVERSAL CITY STUDIOS LLC,  
a Delaware limited liability company,

By: \_\_\_\_\_

Shannon H. Alexander,

Senior Vice President & Authorized Signatory

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

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

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