

Richard Morin (SBN 285275)
Bryce Fick (SBN 322951)
Law Office of Rick Morin, PC
555 Capitol Mall Suite 750
Sacramento, CA 95814-4508
Phone: (916) 333-2222
Email: legal@rickmorin.net

Attorneys for Plaintiff

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

Kimberly Ann Harrison,

Plaintiff,

v.

Amazon.com, Inc., 8697132 Canada
Corporation, and Does 1-20,

Defendants.

Case No. 34-2020-00278063

[PROPOSED] CONSENT JUDGMENT

Date:

Time:

Dept.: 53

Judge:

Reservation No.

1. INTRODUCTION

1.1 The Parties. This Consent Judgment is entered into by and between Kimberly Ann Harrison acting on behalf of the public interest (hereinafter “Plaintiff”) and 8697132 Canada Corporation (“Defendant” or “Defendant 8697132 Canada Corporation”) with Plaintiff and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Plaintiff is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products or, at the very least, help ensure consumers are aware of the hazardous substances they will be exposed to in the products they are considering purchasing. Defendant is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1 **1.2 Allegations and Representations.** Plaintiff alleges that Defendant has exposed individuals
2 to lead from its sales of a brass spinning top without providing a clear and reasonable exposure warning
3 pursuant to Proposition 65. Lead is listed under Proposition 65 as a chemical known to the State of
4 California to cause cancer and birth defects or other reproductive harm.

5 **1.3 Notice of Violation/Complaint.** On or about February 19, 2020, Plaintiff served Defendant
6 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
7 pursuant to Health & Safety Code §25249.7(d) (“Notice”), alleging that Defendant violated Proposition
8 65 for failing to warn consumers and customers that use of the brass spinning top exposes users in
9 California to lead and for failure to warn that lead is known to cause cancer and birth defects or other
10 reproductive harm. No public enforcer has brought nor is diligently prosecuting the claims alleged in
11 the Notice. On May 6, 2020, Plaintiff filed the complaint (“Complaint”) in the matter.

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

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

25 1.6 Defendant alleges that it began providing a written warning to California consumers on
26 August 24, 2020. This change in Defendant’s conduct was caused by this action, including the action
27 providing the catalyst for this change.

1 **2. DEFINITIONS**

2 **2.1 Covered Products.** The term “Covered Products” means the brass spinning tops
3 that defendant 8697132 Canada Corporation or Amazon.com, Inc. sold, distributed and/or offered for
4 sale in California.

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 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed by both
9 Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in this
10 agreement must be provided for all Covered Products that Defendant distributes, sells or offers for sale
11 in California. There shall be no obligation for Defendant to provide a warning for Covered Products
12 that enter the stream of commerce prior to the date this Consent Judgment is signed by both Parties.
13 The warning shall consist of either the Warning or Alternative Warning described in §§ 3.1(a) or (b),
14 respectively:

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

16 **WARNING:** This product can expose you to chemicals including lead, which is known to the
17 State of California to cause cancer and birth defects or other reproductive harm. For more information
18 go to <https://www.p65warnings.ca.gov/>.

19 **(b) Alternative Warning:** Defendant may, but is not required to, use the alternative short- form
20 warning as set forth in this § 3.1(b) (“Alternative Warning”) as follows:

21 **WARNING:** Cancer and Reproductive Harm - <https://www.p65warnings.ca.gov/>

22 **3.2** A Warning or Alternative Warning provided pursuant to § 3.1 must print the word
23 “WARNING” in all capital letters and in bold font, followed by a colon. The warning symbol to the
24 left of the word “WARNING” must be a black exclamation point in a yellow equilateral triangle with
25 a black outline, except that if the sign or label for the Covered Product does not use the color yellow,
26 the symbol may be in black and white. The symbol must be in a size no smaller than the height of the
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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. The warning is to be 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

If Defendant sells Covered Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the same page as the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Covered Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies. If Defendant sells through any third-party website, it will notify the third-party of the presence of lead in its product and the need for a warning by whatever means the third-party accepts communications or notices of such information.

3.3 Compliance with Warning Regulations. Defendant shall be deemed to be in compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent Judgment or by complying with warning regulations adopted by the State of California's Office of Environmental Health Hazard Assessment (“OEHHA”), or by the federal Government or California State Government.

4. MONETARY TERMS

4.1 Civil Penalty. Defendant 8697132 Canada Corporation shall pay \$5,000.00 as a Civil Penalty 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 OEHHA and the remaining 25% of the Civil Penalty remitted to Plaintiff, as provided by California Health & Safety

Code§ 25249. 12(d).

4.1.1 Within ten (10) days of the Effective Date, Defendant 8697132 Canada Corporation shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$3,750.00; and to (b) “Law Office of Rick Morin, PC Trust” in the amount of \$1,250.00. Payment owed to Plaintiff pursuant to this Section shall be delivered to the following payment address:

Law Office of Rick Morin, PC

555 Capitol Mall, Suite 750

Sacramento, CA 95814

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 the Law Office of Rick Morin, PC at the address set forth above as proof of payment to OEHHA.

4.2 Attorneys’ Fees. Within ten (10) days of the Effective Date, Defendant 8697132 Canada Corporation shall pay \$9,000.00 to the Law Office of Rick Morin, PC as complete reimbursement for Plaintiff’s attorney’s fees and costs incurred as a result of investigation, bringing this matter to

1 Defendant's attention, litigating and negotiating, and obtaining judicial approval of a settlement in the public
2 interest, pursuant to Code of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff acting on her own
5 behalf, and on behalf of the public interest, and Defendant, and its parents, shareholders, members,
6 directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions,
7 subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns
8 ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or indirectly
9 distribute or sell Covered Products, including but not limited to manufacturers, suppliers, distributors,
10 wholesalers, customers, licensors, licensees, retailers, franchisees, cooperative members, Amazon.com,
11 Inc., and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
12 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
13 successors and assigns, and all entities from whom ("Releasees"), of all claims for violations of Proposition 65
14 based on exposure to lead from Covered Products as set forth in the Notice, with respect to any Covered
15 Products distributed, or sold by 8697132 Canada Corporation prior to the Effective Date. This Consent
16 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act in his, her,
17 or its interests or the public interest shall be permitted to pursue and/or take any action with respect to any
18 violation of Proposition 65 that was alleged in the Complaint or that could have been brought pursuant to the
19 Notice against Defendant and/or the Releasees of the Covered Products ("Proposition 65 Claims"),
20 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to
21 the Covered Products.

22 5.2 In addition to the foregoing, Plaintiff, on behalf of herself, her past and current agents,
23 representatives, attorneys, and successors and/or assignees, and not in her representative capacity, hereby
24 waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases
25 Defendant and Releasees from any and all manner of actions, causes of action, claims, demands, rights,
26 suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
27 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
28 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or
arising from Covered Products distributed or sold by 8697132 Canada

Corporation or Releasees. With respect to the foregoing waivers and releases in this paragraph, Plaintiff hereby specifically waives any and all rights and benefits which she now has, or in the future may have. conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as follows:

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

5.3 Defendant waives any and all claims against Plaintiff, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Plaintiff and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

6. INTEGRATION

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

7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of 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.

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; (ii) overnight courier on any party by the other party; or (iii) express international shipping with tracking, which may include United States Postal Service Priority Mail Express International or Global Express Guaranteed, or another carrier that provides reliable comparable service with guaranteed shipping of 1-5 business days to the following addresses:

For Defendant:

Ruben Lopez

8697132 Canada Corporation

260 Carlaw Ave. Unit 203

Toronto, ON, M4M3L1

and

For Plaintiff:

Richard Morin

Law Office of Rick Morin, PC

555 Capitol Mall, Suite 750

Sacramento, CA 95814

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 OR ELECTRONIC SIGNATURES

9.1 This Consent Judgment may be executed in counterparts and by facsimile or electronic transmission/delivery, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE §. 25249.7(f)

10.1. Plaintiff agrees to comply with the requirements set forth in California Health & Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Defendant agree it shall support approval of such Motion.

10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the Parties

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

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

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction over the parties to enforce the settlement until
17 performance in full of the terms of the settlement.

18 **14. AUTHORIZATION**

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

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AGREED TO:

Date: Mar 17, 2021

By: *Kim Harrison*
Kim Harrison (Mar 17, 2021 11:02 PDT)

Kimberly Ann Harrison



AGREED TO:

Date: March 13 2021

By: Ruben Gonzalez Lopez

Title: Director

8697132 Canada Corporation