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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,
12 Plaintiff,
13 v.
14 MONKEYSPORTS, INC.,
15 Defendant.

Case No.: CGC-21-595959

CONSENT JUDGMENT

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: August 3, 2023
Hearing Time: 9:30 AM
Complaint Filed: January 13, 2022

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Monkeysports, Inc.
4 (“Monkeysports” or “Defendant”) with Espinoza and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Espinoza 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. Monkeysports is alleged to be
8 a 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.** Espinoza alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of (a) GRAF Wheeled Figure Skate
12 Backpacks (b) GRIT PX4 Pro Hockey Carry Bags (c) Sher-Wood Heritage Senior Hockey Duffle
13 Bags, and (d) Alkali RPD Max+ Team Duffle Hockey Equipment Bags. DEHP is listed under
14 Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or
15 other reproductive harm.

16 Espinoza further alleges that Defendant has exposed individuals to diisononyl phthalate
17 (DINP) from its sales of True Pro Senior Hockey Equipment Bags without providing a clear and
18 reasonable exposure warning pursuant to Proposition 65. DINP is listed under Proposition 65 as a
19 chemical known to the State of California to cause cancer.

20 **1.3 Notices of Violation/Complaints.**

21 **1.3.1** On or about February 4, 2021 (GRAF Wheeled Figure Skate Backpacks),
22 February 15, 2021 (GRIT PX4 Pro Hockey Carry Bags, Sher-Wood Heritage Senior Hockey Duffle
23 Bags and Alkali RPD Max+ Team Duffle Hockey Equipment Bags), and March 2, 2021 (True Pro
24 Senior Hockey Equipment Bags), Espinoza served Monkeysports and various public enforcement
25 agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code
26 §25249.7(d) (collectively, the “Notices”), alleging that Defendant violated Proposition 65 for
27 failing to warn consumers and customers that use of the Covered Products (defined herein) expose
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1 users in California to DEHP and/or DINP. No public enforcer has brought and is diligently
2 prosecuting the claims alleged in the Notices.

3 1.3.2 On January 13, 2022, Espinoza filed a complaint (the “Complaint”) setting
4 forth alleged violations of Proposition 65 for use of the GRIT PX4 Pro Hockey Carry Bags as
5 alleged in the February 15, 2021, Notice of Violation.

6 1.3.3 On January 14, 2022, Espinoza filed a first amended complaint (the “FAC”)
7 setting forth alleged violations of Proposition 65 as alleged in the February 4, 2021 (GRAF
8 Wheeled Figure Skate Backpacks), February 15, 2021 (Sher-Wood Heritage Senior Hockey Duffle
9 Bags and Alkali RPD Max+ Team Duffle Hockey Equipment Bags), and March 2, 2021 (True Pro
10 Senior Hockey Equipment Bags), Notices of Violation.

11 1.3.4 The Complaint and FAC are collectively referred to herein as, the “Action.”

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 Action filed in this matter, that
14 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
15 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
16 of all claims which were or could have been raised in the Action based on the facts alleged therein
17 and/or in the Notice.

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

25 **2. DEFINITIONS**

26 2.1 **Covered Products.** The term “Covered Products” means (a) GRAF Wheeled Figure
27 Skate Backpacks (b) GRIT PX4 Pro Hockey Carry Bags (c) Sher-Wood Heritage Senior Hockey
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1 Duffle Bags (d) Alkali RPD Max+ Team Duffle Hockey Equipment Bags, and (e) True Pro Senior
2 Hockey Equipment Bags that are manufactured, distributed and/or offered for sale in California by
3 MonkeySports.

4 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
5 entered as a Judgment of the Court.

6 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

7 3.1 **Reformulation of Covered Products.** As of ten (10) days after the Effective Date,
8 Covered Products that MonkeySports directly manufactures, imports, distributes, sells, or offers for
9 sale in California shall either be: (a) Reformulated Products pursuant to § 3.2, below; or (b) be
10 labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
11 purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that is in
12 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
13 and 3.4 shall not apply to any Reformulated Product.

14 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
15 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP and
16 DINP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
17 3580A and 8270C or other methodology utilized by federal or state government agencies for the
18 purpose of determining the phthalate content in a solid substance.

19 3.3 **Clear and Reasonable Warning.** As of ten (10) days after the Effective Date, and
20 continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4
21 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells,
22 or offers for sale in California that is not a Reformulated Product. There shall be no obligation for
23 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
24 the date this Consent Judgment is signed by both Parties. The warning shall consist of either the
25 **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

26 (a) **Warning for Covered Products that Expose Users to DEHP as Identified in**
27 **Section 1.2 of this Agreement.** The “Warning” shall consist of the statement:
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1 **⚠ WARNING:** This product can expose you to chemicals including di(2-
2 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause
3 cancer and birth defects or other reproductive harm. For more information go to
4 www.P65Warnings.ca.gov.

5 (b) **Warning for Covered Products that Expose Users to DINP as Identified in**
6 **Section 1.2 of this Agreement.** The “**Warning**” shall consist of the statement:

7 **⚠ WARNING:** This product can expose you to chemicals including diisononyl
8 phthalate (DINP), which is known to the State of California to cause cancer. For
9 more information go to www.P65Warnings.ca.gov.

10 (c) **Alternative Warning:** Monkeyports may, but is not required to, use the alternative
11 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”¹) as follows:

12 **⚠ WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

13 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
14 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
15 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
16 triangle with a black outline, except that if the sign or label for the Covered Product does not use
17 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
18 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
19 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
20 electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is
21 displayed with such conspicuousness, as compared with other words, statements, or designs as to
22 render it likely to be read and understood by an ordinary individual under customary conditions of
23 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
24 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
25 the use of the Covered Product and shall be at least the same size as those other safety warnings.

26 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
27 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
28 Monkeyports offers Covered Products for sale to consumers in California. The requirements of

¹ If a Covered Product exposes users to DINP only, the **Alternative Warning** shall not include the language, “and Reproductive Harm”.

1 this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked
2 hyperlink using the word “**WARNING**,” appears on the product display page, or by otherwise
3 prominently displaying the warning to the purchaser prior to completing the purchase. To comply
4 with this Section, Monkeysports shall (a) post the **Warning** or **Alternative Warning** on its own
5 website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b)
6 if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its
7 third-party internet sellers, provide such sellers with written notice in accordance with Title 27,
8 California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that
9 have been provided with written notice in accordance with Title 27, California Code of Regulations,
10 Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning
11 requirements of this Section.

12 3.4 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
14 Judgment or by complying with warning requirements adopted by the State of California’s Office
15 of Environmental Health Hazard Assessment (“OEHHA”) applicable to the Covered Product and
16 the exposures at issue after the Effective Date.

17 **4. MONETARY TERMS**

18 4.1 **Civil Penalty.** Monkeysports shall pay \$2,000.00 as a Civil Penalty pursuant to
19 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
20 & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
21 remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety
22 Code § 25249.12(d).

23 4.1.1 Within ten (10) days of the Effective Date, Monkeysports shall issue two
24 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
25 to (b) “Gabriel Espinoza” in the amount of \$500.00. Payment owed to Espinoza pursuant to this
26 Section shall be delivered to the following payment address:

27 Evan J. Smith, Esquire
28 Brodsky & Smith

1 Two Bala Plaza, Suite 805
2 Bala Cynwyd, PA 19004

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

5 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

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

17 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
18 forth above as proof of payment to OEHHA.

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Monkeysports shall
20 pay \$23,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for
21 Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
22 Monkeysports attention, litigating and negotiating and obtaining judicial approval of a settlement
23 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
26 acting on his own behalf, and on behalf of the public interest, and Monkeysports, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28 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, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for

1 violations of Proposition 65 based on exposure to DEHP and/or DINP from use of the Covered
2 Products as set forth in the Notices, with respect to any Covered Products manufactured,
3 distributed, or sold by Monkeysports prior to the Effective Date. It is the Parties' intention that this
4 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
5 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
6 pursue and/or take any action with respect to any violation of Proposition 65 based on exposure to
7 DEHP and/or DINP that was alleged in the Action, or that could have been brought pursuant to the
8 Notices against Monkeysports and/or the Downstream Releasees of the Covered Products
9 ("Proposition 65 Claims"). Third party internet sellers who do not provide a warning in compliance
10 with §§ 3.4, above are expressly not covered by this release.

11 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
12 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
13 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
14 legal action and releases Monkeysports, Defendant Releasees, and Downstream Releasees from
15 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
16 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
17 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
18 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
19 from DEHP and/or DINP exposure from Covered Products manufactured, distributed, or sold by
20 Monkeysports, Defendant Releasees or Downstream Releasees. With respect to the foregoing
21 waivers and releases in this paragraph, Espinoza hereby specifically waives any and all rights and
22 benefits which he now has, or in the future may have, conferred by virtue of the provisions of §
23 1542 of the California Civil Code, which provides as follows:

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

1 5.3 Monkeysports waives any and all claims against Espinoza, his attorneys and other
2 representatives, for any and all actions taken, or statements made (or those that could have been
3 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
5 and/or with respect to DEHP and/or DINP exposure from Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
8 prior negotiations and understandings related hereto shall be deemed to have been merged within
9 it. No representations or terms of agreement other than those contained herein exist or have been
10 made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
14 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
15 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
16 that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendant:

23 Theodore E. Bacon
24 Alvarado Smith
25 633 W. Fifth Street, Suite 900
26 Los Angeles, CA 90071

26 And

27 For Espinoza:

28 Evan Smith

1 Brodsky & Smith
2 9595 Wilshire Blvd., Ste. 900
3 Beverly Hills, CA 90212

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

6 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

7 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
8 which shall be deemed an original, and all of which, when taken together, shall constitute one and
9 the same document.

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

11 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
12 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
13 Defendant agrees it shall support approval of such Motion.

14 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
15 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
16 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
17 days, the case shall proceed on its normal course.

18 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
19 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
20 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
21 its normal course on the trial court's calendar.

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11. MODIFICATION

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

12. ATTORNEY'S FEES

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

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

13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or he 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: 6/14/2023

Date: _____

By: 
GABRIEL ESPINOZA

By: _____
MONKEYSPORTS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: _____

Date: April 13, 2023

By: _____

By: Tom Arnold

GABRIEL ESPINOZA

MONKEYSPORTS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court