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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES COUNTY

11 GABRIEL ESPINOZA,
12 Plaintiff,

13 v.

14 ADIR INTERNATIONAL, LLC,
15
16 Defendant.

Case No.: 24STCV08365

CONSENT JUDGMENT

Judge: Christopher K. Lui
Dept.: 76
Hearing Date: November 13, 2024
Hearing Time: 8:30 AM
Reservation ID: 769439685703
Complaint Filed: November 13, 2023

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel Espinoza (“Espinoza” or “Plaintiff”) each acting on behalf of the public interest, and Adir International, LLC (“Adir” or “Defendant”) with Espinoza and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Espinoza 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. Espinoza alleges that Adir is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Plaintiff alleges that Defendant has exposed individuals to bisphenol A (BPA) from its sales of (a) Axessorize ProShield Plus iPhone cases, UPC # 680813112307, (b) Torras Upro Clear iPhone cases, UPC # 850044880096, (c) *Hover-1™* helmets with detachable visors, UPC # 888255238986, (d) *Skech®* Matrix iPhone cases, UPC # 811090029129, (e) *Nimbus9®* Vapor Air 2 clear cases, # 811433033165, and/or (f) Incase hardshell cases for MacBooks, UPC # 650450139432. BPA is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 **Notices of Violation/Complaint.**

1.3.1 On or about November 28, 2022, Espinoza gave notice of alleged violation of Health and Safety Code § 25249.6 (the “First November Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of the Axessorize ProShield Plus iPhone cases, UPC # 680813112307 expose users in California to BPA. No public enforcer has brought and is diligently prosecuting the claims alleged in the First November Notice.

1.3.2 On or about November 28, 2022, Espinoza gave notice of alleged violation of Health and Safety Code § 25249.6 (the “Second November Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of the Torras Upro Clear iPhone cases, UPC # 850044880096 expose users in California to BPA. No public enforcer has brought and is diligently prosecuting the claims alleged in the Second November Notice.

1 1.3.3 On or about November 28, 2022, Espinoza gave notice of alleged violation
2 of Health and Safety Code § 25249.6 (the “Third November Notice”), alleging that Defendant
3 violated Proposition 65 for failing to warn consumers and customers that use of the *Hover-1*TM
4 helmets with detachable visors, UPC # 888255238986 expose users in California to BPA. No public
5 enforcer has brought and is diligently prosecuting the claims alleged in the Third November Notice.

6 1.3.4 On or about November 28, 2022, Espinoza gave notice of alleged violation
7 of Health and Safety Code § 25249.6 (the “Fourth November Notice”), alleging that Defendant
8 violated Proposition 65 for failing to warn consumers and customers that use of the *Skech*[®] Matrix
9 iPhone cases, UPC # 811090029129 expose users in California to BPA. No public enforcer has
10 brought and is diligently prosecuting the claims alleged in the Fourth November Notice.

11 1.3.5 On or about August 29, 2023, Espinoza gave notice of alleged violation of
12 Health and Safety Code § 25249.6 (the “First August Notice”), alleging that Defendant violated
13 Proposition 65 for failing to warn consumers and customers that use of the *Nimbus9*[®] Vapor Air 2
14 clear cases, # 811433033165 expose users in California to BPA. No public enforcer has brought
15 and is diligently prosecuting the claims alleged in the First August Notice.

16 1.3.6 On or about August 29, 2023, Espinoza gave notice of alleged violation of
17 Health and Safety Code § 25249.6 (the “Second August Notice”), alleging that Defendant violated
18 Proposition 65 for failing to warn consumers and customers that use of the Incase hardshell cases
19 for MacBooks, UPC # 650450139432 expose users in California to BPA. No public enforcer has
20 brought and is diligently prosecuting the claims alleged in the Second August Notice.

21 1.3.7 The First November Notice, the Second November Notice, the Third
22 November Notice, the Fourth November Notice, the First August Notice, and the Second August
23 Notice are collectively referred to herein as, the “Notices.”

24 1.3.8 On November 13, 2023, Espinoza filed a complaint (the “Complaint”)
25 setting forth violations of Proposition 65 for the Products as alleged in the Notices.

26 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
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1 in the County of Los Angeles, and that this Court has jurisdiction to approve, enter, and oversee
2 the enforcement of this Consent Judgment as a full and final binding resolution of all claims which
3 were or could have been raised in the Complaint based on the facts alleged therein and/or in the
4 Notices.

5 1.5 Defendant denies the material allegations contained in the Notices and the
6 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
7 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
8 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
9 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
10 specifically denied by Defendant. However, this Section shall not diminish or otherwise affect the
11 obligations, responsibilities, and duties of Defendant pursuant to this Consent Judgment.

12 **2. DEFINITIONS**

13 2.1 **Covered Products.** The term “Covered Products” means (a) Axessorize ProShield
14 Plus iPhone cases, UPC # 680813112307, (b) Torras Upro Clear iPhone cases, UPC #
15 850044880096, (c) *Hover-1™* helmets with detachable visors, UPC # 888255238986, (d) *Skech®*
16 Matrix iPhone cases, UPC # 811090029129, (e) *Nimbus9®* Vapor Air 2 clear cases, #
17 811433033165, and/or (f) Incase hardshell cases for MacBooks, UPC # 650450139432
18 (collectively, the “Covered Products” and each a “Covered Product”) that are distributed and/or
19 offered for sale in California by Adir.


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 **Clear and Reasonable Warning.** Commencing within ninety (90) days of the
24 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
25 this §§ 3.1 and 3.2 must be provided for all for all Covered Products that Defendant manufacturers,
26 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
27 to provide a warning for Covered Products that enter the stream of commerce prior to, or within 60
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1 days, of the Effective Date. The warning shall consist of either the **Warning** or **Alternative**
2 **Warning** described below in §§ 3.1(a) or (b), respectively:

3 (a) **Warning.** The “**Warning**” for the Covered Products shall consist of the
4 statement:

5  **WARNING:** This product can expose you to chemicals, including
6 bisphenol A (BPA), which is known to the State of California to cause birth defects
7 or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

10  **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

11 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
12 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
13 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
14 triangle with a black outline, except that if the sign or label for the Covered Product does not use
15 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
16 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
17 to or printed on the Covered Products’ packaging or labeling, or on a placard, shelf tag, sign or
18 electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is
19 displayed with such conspicuousness, as compared with other words, statements, or designs as to
20 render it likely to be read and understood by an ordinary individual under customary conditions of
21 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
22 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
23 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
24 consumer information is provided in a foreign language, Adir shall provide the **Warning** in the
25 foreign language.

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

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

12 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
13 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 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.** Adir shall pay \$4,000.00 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 § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and equal shares of
21 the remaining 25% of the Civil Penalty remitted to each plaintiff, as provided by California Health
22 & Safety Code § 25249.12(d).

23 **4.1.1** Within ten (10) business days of the Effective Date, Adir shall issue three
24 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$3,000.00; and
25 to “Gabriel Espinoza” in the amount of \$1,000.00. Payment owed to Plaintiff 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 forth
18 above as proof of payment to OEHHA.

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Adir shall pay
20 \$38,000.00 to Brodsky Smith as complete reimbursement for Plaintiff's attorneys' fees and costs
21 incurred as a result of investigating, bringing this matter to Adir's attention, litigating and
22 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
23 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 Adir, 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"), as well as any and all entities from
whom they obtain or have obtained and to whom they directly or indirectly distribute or have
distributed or sell or have sold Covered Products, including but not limited to manufacturers,
suppliers, vendors, distributors, wholesalers, customers, licensors, licensees retailers, franchisees,

1 and cooperative members (“Downstream Releasees”), of any and all claims for violations of
2 Proposition 65 based on exposure to the BPA from use of the Covered Products as set forth in the
3 Notices, with respect to any Covered Products distributed, or sold by Adir prior to the Effective
4 Date. It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that
5 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
6 public interest shall be permitted to pursue and/or take any action with respect to any violation of
7 Proposition 65 based on exposure to BPA that was alleged in the Notices and Complaint, or that
8 could have been brought pursuant to the Notices against Adir and/or the Downstream Releasees of
9 the Covered Products (“Proposition 65 Claims”).

10 5.2 In addition to the foregoing, Espinoza, each on behalf of himself, his past and current
11 agents, representatives, attorneys, beneficiaries, heirs, and successors and/or assignees, and *not* in
12 his representative capacity, hereby waives all rights to institute or participate in, directly or
13 indirectly, any form of legal action and releases Adir, Defendant Releasees, and Downstream
14 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
15 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
16 expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed
17 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related
18 to or arising from exposure to BPA from use of the Covered Products distributed, or sold by Adir,
19 Defendant Releasees or Downstream Releasees. With respect to the foregoing waivers and releases
20 in this paragraph, Espinoza waives any and all rights and benefits which he now have, or in the
21 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
22 provides as follows:

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

27 5.3 Adir waives any and all claims against Plaintiff, his attorneys and other
28 representatives, based on the filing or prosecution of the Notices and the Complainte.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
3 prior negotiations and understandings related hereto shall be deemed to have been merged within
4 it. No representations or terms of agreement other than those contained herein exist or have been
5 made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California.

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 Mauricio Fux, Executive VP & General Counsel
16 Adir International, LLC
17 1605 W. Olympic Boulevard, Suite 600
18 Los Angeles, California 90015

18 With a simultaneous courtesy copy to

19 Matthew H. Schwartz
20 Schwartz Law Center, LLC
21 2985 Gordy Parkway, Suite 550
22 Marietta, Georgia 30066

21 And

22 For Plaintiff:

23 Evan Smith
24 Brodsky Smith
25 Two Bala Plaza, Suite 805
26 Bala Cynwyd, PA 19004

26 Any party, from time to time, may specify in writing to the other party a change of address to
27 which all notices and other communications shall be sent.
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9. **COUNTERPARTS; FACSIMILE SIGNATURES**

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.

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

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

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 against another Party shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

13. **RETENTION OF JURISDICTION**

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

1 **14. CONFIDENTIALITY**

2 14.1 Each of the Parties acknowledges and agrees that discussions pertaining to this
3 Agreement constitute confidential settlement communications that shall remain confidential to the
4 extent possible. The Parties agree that such discussions regarding this Agreement should not be
5 disclosed to any third party except: (A) to such other persons wherein disclosure is made to obtain
6 the assistance of the party receiving the disclosure (i.e., lawyers, auditors, accountants, technical
7 consultants, financial consultants, insurers) related to this Agreement; or (B) to enforce the terms
8 of this Agreement.

9 **15. AUTHORIZATION**

10 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16 Date: _____

Date: 9/19/24

17 By: _____

By: 

18 GABRIEL ESPINOZA

ADIR INTERNATIONAL, LLC

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

20 Dated: _____

21 _____
22 Judge of Superior Court

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2
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14 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
15 explicitly provided herein each Party is to bear its own fees and costs.

16 **AGREED TO:**

AGREED TO:

17
18 Date: _____

9/20/24

Date: _____

19 By: _____

GABRIEL ESPINOZA

By: _____

ADIR INTERNATIONAL, LLC

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21
22
23 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

24
25 Dated: _____

Judge of Superior Court