

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 STABILUS, INC.,

15 Defendant.

Case No.: CGC-23-611017

**STIPULATED CONSENT
JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: March 15, 2024

Hearing Time: 9:30 AM

Complaint Filed: December 11, 2023

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1 **The Parties.** This Stipulated Consent Judgment is entered into by and between Gabriel Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Stabilus, Inc. (“Stabilus” 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 contained in consumer products. Stabilus 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.

1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of *Stabilus*® cases, including UPC # 194879002545, without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 **Notice of Violation/Action.** On or about February 14, 2023, Espinoza served O’Reilly Automotive Stores, Inc., O’Reilly Automotive, Inc. (collectively, “O’Reilly”), Stabilus, and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of *Stabilus*® cases, including UPC # 194879002545, expose users in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On December 11, 2023, Espinoza filed a complaint (the “Complaint”).

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

1 1.5 Defendant denies the material allegations contained in Espinoza’s Notice
2 and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or
4 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
5 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
6 being specifically denied by Defendant. However, this section shall not diminish or otherwise affect
7 the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means *Stabilus*® cases,
10 including UPC # 194879002545, that are manufactured, distributed, shipped into California and
11 offered for sale in California by Stabilus.

12 2.2 **Effective Date.** The term “Effective Date” means the date this Consent
13 Judgment is entered as a Judgment of the Court.

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

15 3.1 Commencing on the Effective Date, and subject to § 3.6, below, Covered
16 Products that Stabilus directly manufactures, imports, distributes, sells, or offers for sale in
17 California shall either be: (a) reformulated Products pursuant to § 3.2, below; or (b) labeled with a
18 clear and reasonable exposure warning pursuant to §§ 3.3 through 3.5, below. For purposes of this
19 Consent Judgment, a “Reformulated Product” is a Covered Product that is in compliance with the
20 standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3 through 3.5 shall not
21 apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** Subject to Section 3.6, any Covered Product that
23 is sold, or offered for sale, to consumers in the State of California after the Effective Date shall be
24 deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning
25 requirements with respect to DEHP if it is a Reformulated Product. “Reformulated Products” shall
26 mean Covered Products that contain concentrations less than or equal to 0.1% (1,000 parts per
27 million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing
28

1 methodologies 3580A and 8270C or other methodology utilized by federal or state government
2 agencies for the purpose of determining the phthalate content in a solid substance.

3 **3.3 Clear and Reasonable Warning.** Subject to § 3.6, covered Products shall
4 be accompanied by a warning as described in §§ 3.3 through 3.5 below. This clear and reasonable
5 exposure warning requirement shall be provided for all Covered Products that Defendant
6 manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated
7 Product. There shall be no obligation for Defendant to provide a warning for Covered Products that
8 enter the stream of commerce prior to the Effective Date. The warning shall consist of either the
9 **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

11 **⚠ WARNING:** This product can expose you to chemicals including di(2-
12 ethylhexyl) phthalate (DEHP), which is known to the State of California to
13 cause cancer and birth defects or other reproductive harm. For more
14 information go to www.P65Warnings.ca.gov.

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

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

18 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print
19 the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning
20 symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow
21 equilateral triangle with a black outline, except that if the sign or label for the Covered Product
22 does not use the color yellow, the symbol may be in black and white. The symbol must be in a size
23 no smaller than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning**
24 shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf
25 tag, sign or electronic device or automatic process, providing that the **Warning** or **Alternative**
26 **Warning** is displayed with such conspicuousness, as compared with other words, statements, or
27 designs as to render it likely to be read and understood by an ordinary individual under customary
28 conditions of purchase or use. The **Warning** or **Alternative Warning** may be contained in the

1 same section of the packaging, labeling, or instruction booklet that states other safety warnings, if
2 any, concerning the use of the Covered Product and shall be at least the same size as those other
3 safety warnings.

4 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
5 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
6 Stabilus offers Products for sale to consumers in California. The requirements of this Section shall
7 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
8 "**WARNING**," appears on the product display page, or by otherwise prominently displaying the
9 warning to the purchaser prior to completing the purchase. To comply with this Section, Stabilus
10 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
11 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
12 the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide
13 such sellers with written notice in accordance with Title 27, California Code of Regulations, §
14 25600.2. Third-party internet sellers of the Covered Product that have been provided with written
15 notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in
16 Section 5 of this Agreement if they fail to meet the warning requirements herein.

17 3.5 **Compliance with Warning Regulations.** After the Effective Date,
18 Defendant shall be deemed to be in compliance with this Consent Judgment by either adhering to
19 §§ 3.3 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by
20 OEHHA which are applicable to the Covered Product. If "consumer information," as that term is
21 defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from
22 time to time, is provided in a foreign language, Stabilus shall provide the **Warning** in the foreign
23 language in accordance with applicable warning regulations adopted by OEHHA.

24 3.6 **Grace Period.** Although Defendant shall be deemed in compliance
25 on the Effective Date, Defendant shall have a three hundred sixty five (365)-day grace period after
26 the Effective Date (the "Grace Period") to complete reformulation or warning as provided for in
27 this Section 3.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. MONETARY TERMS

4.1 **Civil Penalty.** Stabilus shall pay \$3,000.00 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 Espinoza, as provided by California Health & Safety Code § 25249.12(d).

4.1.1 Within ten (10) days of the Effective Date, Stabilus shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to (b) "Gabriel Espinoza" in the amount of \$750.00. Payment owed to Espinoza pursuant to this Section shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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 Brodsky Smith at the address set forth above as proof of payment to OEHHA.

4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Stabilus shall pay \$36,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention of Stabilus,

1 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
2 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
5 between Espinoza acting on his own behalf, and on behalf of the public interest, and Stabilus, and
6 its parents, shareholders, members, directors, officers, managers, employees, representatives,
7 agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
8 and their predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom
9 they obtain and to whom they directly or indirectly distribute or sell Covered Products, including
10 but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,
11 licensees retailers, including but not limited to, O’Reilly, and its parents, subsidiaries, and affiliates,
12 franchisees, and cooperative members (“Downstream Releasees”), of all claims for violations of
13 Proposition 65 based on exposure to DEHP from use of the Covered Products manufactured,
14 distributed, or sold by Stabilus prior to the Effective Date as set forth in the Notice. It is the Parties’
15 intention that this Consent Judgment shall have preclusive effect such that no other actions by
16 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
17 permitted to pursue and take any action with respect to any violation of Proposition 65 based on
18 exposure to DEHP from use of the Covered Products that was alleged in the Complaint, or that
19 could have been brought pursuant to the Notice against Stabilus and the Downstream Releasees
20 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes
21 compliance with Proposition 65 with regard to exposure to DEHP from use of the Covered
22 Products.

23 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and
24 current agents, representatives, attorneys, and successors and assignees, and *not* in his
25 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
26 any form of legal action and releases Stabilus, Defendant Releasees, and Downstream Releasees
27 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
28

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 Stabilus, Defendant Releasees or
5 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
6 Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the
7 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
8 provides as follows:

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

13 5.3 Espinoza understands and acknowledges that the significance and
14 consequence of this waiver of § 1542 of the California Civil Code is that even if Espinoza suffers
15 future damages arising out of our resulting from, or related directly or indirectly to, in whole or in
16 part, the Covered Products, including but not limited to any exposure to or failure to warn with
17 respect to exposure to, the Covered Products, Espinoza will not be able to make any claim for those
18 damages against any of Stabilus, Defendant Releasees, or Downstream Releasees.

19 5.4 Stabilus waives any and all claims against Espinoza, his attorneys and other
20 representatives, for any and all actions taken, or statements made (or those that could have been
21 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and with respect to Covered Products.

24 **6. INTEGRATION**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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; or (ii) overnight courier on any party by the other party at the following addresses:

For Defendant:

Sarah A. Slack
Foley & Lardner LLP
555 South Flower St., Ste. 3300
Los Angeles, CA 90071

And

For Espinoza:

Evan Smith
Brodsky Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

10.1 Espinoza 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.

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

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 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.

[The rest of this page is intentionally blank.]

AGREED TO:

AGREED TO:

Date: 1/26/24
By: [Signature]
GABRIEL ESPINOZA

Date: 12.22.2023
By: [Signature]
STABILUS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court