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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 CYCLE GEAR, INC.,

15 Defendant.

Case No.: CGC-24-614090

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: September 27, 2024

Hearing Time: 9:30 AM

Complaint Filed: April 19, 2024

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 Cycle Gear, Inc.
4 (“Cycle Gear” 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. Cycle Gear is alleged to be a
8 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 Stockton Tool Company compact
12 roadside tool kit bags, UPC # 884475112853 without providing a clear and reasonable exposure
13 warning pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
14 to the State of California to cause cancer and birth defects or other reproductive harm.

15 1.3 **Notice of Violation/Action.** On or about April 27, 2023, Espinoza served Cycle
16 Gear and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of the Stockton Tool
19 Company compact roadside tool kit bags, UPC # 884475112853 expose users in California to
20 DEHP. No public enforcer has brought and is diligently prosecuting the claims alleged in the
21 Notice. On April 19, 2024, Espinoza filed a complaint (the “Complaint”).

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Complaint based on the facts alleged
27 therein and/or in the Notice.

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

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Stockton Tool Company
10 compact roadside tool kit bags, UPC # 884475112853 that are manufactured, distributed, shipped
11 into California and offered for sale in California by Cycle Gear.

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

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

15 3.1 **Reformulation of Covered Products.** As of the Effective Date , and continuing
16 thereafter, Covered Products that Cycle Gear directly manufactures, imports, distributes, sells, or
17 offers for sale in California shall either be: (a) Reformulated Products pursuant to § 3.2, below; or
18 (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For
19 purposes of this Consent Judgment, a “Reformulated Product” is a Covered Product that is in
20 compliance with the standard set forth in § 3.2 below. The warning requirement set forth in §§ 3.3
21 and 3.4 shall not apply to any Reformulated Product.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
23 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
24 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
25 and 8270C or other methodology utilized by federal or state government agencies for the purpose
26 of determining the phthalate content in a solid substance.

1 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
2 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
3 provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or
4 offers for sale in California that is not a Reformulated Product. There shall be no obligation for
5 Defendant to provide a warning for Covered Products that enter the stream of commerce prior to
6 the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**
7 described in §§ 3.3(a) or (b), respectively:

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

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

12 (b) **Alternative Warning:** Cycle Gear may, but is not required to, use the alternative
13 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

15 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
16 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
17 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
18 triangle with a black outline, except that if the sign or label for the Covered Product does not use
19 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
20 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
21 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
22 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
23 displayed with such conspicuousness, as compared with other words, statements, or designs as to
24 render it likely to be read and understood by an ordinary individual under customary conditions of
25 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
26 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
27 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
28 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section

1 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Cycle Gear
2 shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
3 applicable warning regulations adopted by the State of California’s Office of Environmental Health
4 Hazard Assessment (“OEHHA”).

5 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
6 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites under
7 the control of Cycle Gear where Covered Products are sold by Cycle Gear or authorized third-party
8 internet sellers directly to consumers located in California. The requirements of this Section shall
9 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
10 “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the
11 warning to the purchaser prior to completing the purchase. To comply with this Section, Cycle Gear
12 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
13 do so, on the websites of its authorized third-party internet sellers that sell directly to consumers
14 located in California.; and (b) if it does not have the ability to post the **Warning** or **Alternative**
15 **Warning** on the websites of its authorized third-party internet sellers that sell to California
16 consumers, provide such sellers with written notice in accordance with Title 27, California Code
17 of Regulations, § 25600.2. Authorized third-party internet sellers of the Covered Product that have
18 been provided with written notice in accordance with Title 27, California Code of Regulations, §
19 25600.2 are not released in Section 5 of this Consent Judgment if they fail to meet the warning
20 requirements herein.

21 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
22 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
23 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
24 Products and exposures at issue. Cycle Gear may comply with the warning requirements of sections
25 3.3 and 3.4 by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.*
26 and/or 27 CCR § 25600 *et seq.*, as may be amended from time to time.

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Cycle Gear shall pay \$2,000.00 as a Civil Penalty pursuant to Health
3 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
5 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

6 4.1.1 Within ten (10) days of the Effective Date, Cycle Gear shall issue two
7 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
8 to (b) “Gabriel Espinoza” in the amount of \$500.00. Payment owed to Espinoza pursuant to this
9 Section shall be delivered to the following payment address:

10 Evan J. Smith, Esquire
11 Brodsky Smith
12 Two Bala Plaza, Suite 805
13 Bala Cynwyd, PA 19004

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

16 For United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 P.O. Box 4010
21 Sacramento, CA 95812-4010

22 For Non-United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95814

28 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.

1 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Cycle Gear shall pay
2 \$22,500.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and costs
3 incurred as a result of investigating, bringing this matter to the attention of Cycle Gear, litigating
4 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
5 Code of Civil Procedure § 1021.5.

6 **5. RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
8 acting on his own behalf, and on behalf of the public interest, and Cycle Gear, and its parents,
9 shareholders, members, directors, officers, managers, employees, representatives, agents,
10 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
11 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
12 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
13 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
14 retailers, including but not limited to Cycle Gear, its parents, subsidiaries, and affiliates,
15 franchisees, and cooperative members ("Downstream Releasees"), of all claims for violations of
16 Proposition 65 based on the constituent DEHP (which includes exposure) contained in Covered
17 Products manufactured, distributed, or sold by Cycle Gear prior to the Effective Date. It is the
18 Parties' intention that this Consent Judgment shall have preclusive effect such that no other actions
19 by private enforcers, whether purporting to act in his, her, or its interests or the public interest shall
20 be permitted to pursue and/or take any action with respect to any violation of Proposition 65 that
21 was alleged in the Notice or Complaint, or that could have been brought pursuant to the Notice or
22 Complaint against Cycle Gear and/or the Downstream Releasees ("Proposition 65 Claims"). Cycle
23 Gear's compliance with the terms of this Consent Judgment constitutes compliance with
24 Proposition 65 by Cycle Gear with regard to exposure to DEHP from use of the Covered Products.

1 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
2 agents, representatives, attorneys, and successors and assignees, and not in his representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Cycle Gear, Defendant Releasees, and Downstream Releasees from any
5 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
9 from Covered Products manufactured, distributed, or sold by Cycle Gear, Defendant Releasees or
10 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
11 Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the
12 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
13 provides as follows:

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

20 5.3 Cycle Gear waives any and all claims against Espinoza, his attorneys and other
21 representatives, for any and all actions taken, or statements made (or those that could have been
22 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
23 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
24 and with respect to Covered Products.

25 **6. INTEGRATION**

26 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
27 any and all prior negotiations and understandings related hereto shall be deemed to have been
28 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.

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7. NOTICES

7.1 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:
Cycle Gear Inc.
c/o Comoto Holdings, Inc.
4020 S. 26th Street
Philadelphia, Pennsylvania 19112
Attn.: James Gonzalez

With a courtesy copy to:
W. Scott Creasman
Taylor English Duma LLP
1600 Parkwood Circle, Ste. 200
Atlanta, GA 30339

And
For Espinoza:

Evan Smith
Brodsky Smith
9465 Wilshire Blvd., Ste. 300
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.

8. COUNTERPARTS; FACSIMILE SIGNATURES

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

3 9.1 Espinoza agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 9.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 9.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **10. MODIFICATION**

15 10.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **11. ATTORNEY'S FEES**

18 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 11.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **12. RETENTION OF JURISDICTION**

23 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

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13. AUTHORIZATION

13.1 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.

AGREED TO:

AGREED TO:

Date: 8 / 9 / 24

Date: 08 / 06 / 2024

By: ~~GABRIEL ESPINOZA~~

By: James Gonzalez
CYCLE GEAR, INC. James Gonzalez

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court