

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9465 Wilshire Blvd., Ste. 300
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 KINOKUNIYA BOOK STORES OF
15 AMERICA COMPANY LIMITED,

16 Defendant.

Case No.: CGC-24-612887

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: October 3, 2024

Hearing Time: 9:30 AM

Complaint Filed: March 6, 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 Kinokuniya Book
4 Stores of America Company Limited (“Kinokuniya” or “Defendant”) with Espinoza and Defendant
5 collectively referred to as the “Parties” and each of them as a “Party.” Espinoza is an individual
6 residing in California that seeks to promote awareness of exposures to toxic chemicals and improve
7 human health by reducing or eliminating hazardous substances contained in consumer products.
8 Kinokuniya is alleged to be a person in the course of doing business for purposes of Proposition
9 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to di(2-ethylhexyl) phthalate (DEHP) known from its sales of Raymay 2 layer student
12 organizers, JAN # 4902562502151, 4902562502182, 4902562502144, 4902562502168,
13 4902562502175 without providing a clear and reasonable exposure warning pursuant to
14 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
15 California to cause cancer and birth defects or other reproductive harm.

16 1.3 **Notice of Violation/Action.** On or about November 30, 2023, Espinoza served
17 Kinokuniya and various public enforcement agencies with documents entitled “60-Day Notice of
18 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
19 violated Proposition 65 for failing to warn consumers and customers that use of Raymay 2 layer
20 student organizers, JAN # 4902562502151, 4902562502182, 4902562502144, 4902562502168,
21 4902562502175 expose users in California to DEHP. No public enforcer has brought and is
22 diligently prosecuting the claims alleged in the Notice. On March 6, 2024, Espinoza filed a
23 complaint (the “Complaint”).

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

3 1.5 Defendant denies the material allegations contained in Espinoza's Notice and
4 Complaint and maintains that it has not violated Proposition 65, and maintains that it has been in
5 compliance with all relevant related statutes and regulations including Cal. Code Regs. 27 §
6 25600.2(f) *et seq.* Nothing in this Consent Judgment shall be construed as an admission by
7 Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this
8 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,
9 conclusion, issue of law, or violation of law, such being specifically denied by Defendant.
10 However, this section shall not diminish or otherwise affect the obligations, responsibilities, and
11 duties of Defendant under this Consent Judgment.

12 **2. DEFINITIONS**

13 2.1 **Covered Products.** The term "Covered Products" means Raymay 2 layer student
14 organizers, JAN # 4902562502151, 4902562502182, 4902562502144, 4902562502168,
15 4902562502175 that are manufactured, distributed, shipped into California and offered for sale in
16 California by Kinokuniya.

17 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
18 entered as a Judgment of the Court.

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

20 3.1 **Reformulation of Covered Products.** Within sixty (60) days of the effective date,
21 and continuing thereafter, Covered Products that Kinokuniya directly manufactures, imports,
22 distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant
23 to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and
24 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a Covered Product
25 that is in compliance with the standard set forth in § 3.2 below. The warning requirement set forth
26 in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

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

6 3.3 **Clear and Reasonable Warning.** As of the date this Consent Judgment is signed
7 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in
8 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
9 imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There
10 shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream
11 of commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall
12 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

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

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

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

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

1 render it likely to be read and understood by an ordinary individual under customary conditions of
2 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
3 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
4 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
5 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
6 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Kinokuniya
7 shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
8 applicable warning regulations adopted by the State of California’s Office of Environmental Health
9 Hazard Assessment (“OEHHA”).

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

23 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
24 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
25 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
26 Product and exposures at issue within sixty (60) days after the Effective Date.

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Kinokuniya 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, Kinokuniya 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
 Bala Cynwyd, PA 19004

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

15 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

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

25 **4.2 Attorneys’ Fees.** Within ten (10) days of the Effective Date, Kinokuniya shall pay
26 \$22,500.00 to Brodsky Smith as complete reimbursement for Espinoza’s attorneys’ fees and costs
27 incurred as a result of investigating, bringing this matter to the attention of Kinokuniya, litigating
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1 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
2 Code of Civil Procedure § 1021.5.

3 **5. RELEASE OF ALL CLAIMS**

4 5.1 This Consent Judgment shall have no application to any Covered Products that are
5 distributed or sold outside of the State of California. This Consent Judgment is a full, final, and
6 binding resolution between Espinoza acting on his own behalf, and on behalf of the public interest,
7 and Kinokuniya, and its parents, shareholders, members, directors, officers, managers, employees,
8 representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies,
9 and affiliates, and their predecessors, successors and assigns (“Defendant Releasees”), and all
10 entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered
11 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
12 customers, licensors, licensees retailers, including but not limited to Kinokuniya, its parents,
13 subsidiaries, and affiliates, franchisees, and cooperative members (“Downstream Releasees”), of
14 all claims for violations of Proposition 65 based on exposure to DEHP from use of the Covered
15 Products manufactured, distributed, or sold by Kinokuniya within 60 days after the Effective Date
16 as set forth in the Notice. It is the Parties’ intention that this Consent Judgment shall have preclusive
17 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its
18 interests or the public interest shall be permitted to pursue and take any action with respect to any
19 violation of Proposition 65 based on exposure to DEHP from use of the Covered Products that was
20 alleged in the Complaint, or that could have been brought pursuant to the Notice against Kinokuniya
21 and the Downstream Releasees (“Proposition 65 Claims”). Kinokuniya’s compliance with the
22 terms of this Consent Judgment constitutes compliance with Proposition 65 by Kinokuniya with
23 regard to exposure to DEHP from use of the Covered Products.

24 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
25 agents, representatives, attorneys, and successors and assignees, and *not* in his representative
26 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
27 legal action and releases Kinokuniya, Defendant Releasees, and Downstream Releasees from any
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1 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
2 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
3 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
4 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
5 from Covered Products manufactured, distributed, or sold by Kinokuniya, Defendant Releasees or
6 Downstream Releasees. It is possible that other claims based on violations of Proposition 65 not
7 known to Espinoza arising out of the facts alleged in the Notice or Complaint and related to the
8 Covered Products will develop or be discovered. The parties agree that this Consent Judgment is
9 expressly intended to cover and include all such claims. With respect to the foregoing waivers and
10 releases in this Section 5, Espinoza hereby specifically waives any and all claims, rights and
11 benefits, known or unknown, which he now has, or in the future may have, conferred by virtue of
12 the provisions of § 1542 of the California Civil Code, which provides as follows:

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

19 5.3 Kinokuniya 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.**

25 6.1 The Parties agree that compliance by Kinokuniya with this Consent Judgment
26 constitutes compliance by Kinokuniya with Proposition 65 with respect to exposure to DEHP from
27 use of the Covered Products.

28 **7. INTEGRATION**

7.1 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

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **8. NOTICES**

4 8.1 Unless specified herein, all correspondence and notices required to be provided
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
6 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
7 by the other party at the following addresses:

8 For Defendant:

9 Wallace E. Smith
10 Squire Patton Boggs (US) LLP
11 555 California St., Ste. 550
San Francisco, CA 94104

12 And

13 For Espinoza:

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

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

19 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
20 which shall be deemed an original, and all of which, when taken together, shall constitute one and
21 the same document.

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

24 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
25 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
26 Defendant agrees it shall support approval of such Motion.

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
3 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
4 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

15 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
16 pursuant to law.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 **14. AUTHORIZATION**

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

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AGREED TO:

Date: 8 | 15 | 24

By: [Signature]
GABRIEL ESPINOZA

AGREED TO:

Date: 8/1/2024

By: [Signature]
KINOKUNIYA BOOK STORES OF
AMERICA COMPANY LIMITED

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court